

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

NORANDA ALUMINUM, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 16-____()

(Joint Administration Requested)

Hearing Date & Time:

February 9, 2016 at 2:00 p.m.
(prevailing Central Time)

Hearing Location:

St. Louis Courtroom 5 North

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS TO (I) AUTHORIZE DEBTORS IN POSSESSION TO
OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105,
362, 363 AND 364, (II) GRANT LIENS AND SUPERPRIORITY CLAIMS TO
POST-PETITION LENDERS PURSUANT TO 11 U.S.C. §§ 364 AND 507, (III) PROVIDE
ADEQUATE PROTECTION TO PRE-PETITION CREDIT PARTIES, (IV) MODIFY
AUTOMATIC STAY PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364 AND 507,
(V) SCHEDULE FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B)
AND (C) AND BANKRUPTCY RULE 4001-2; AND (VI) GRANT RELATED RELIEF**

Noranda Aluminum Inc. and certain of its affiliates and subsidiaries, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), move this Court for entry of an interim order, substantially in the form attached hereto as Exhibit A, and a final order (respectively, the "Interim Order") and the "Final Order" and each a "DIP Order", and collectively, the "DIP Orders") authorizing the Debtors to obtain postpetition financing and utilize cash collateral and granting adequate protection to

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: Noranda Aluminum, Inc. (Del.; 5285), Gramercy Alumina Holdings Inc. (Del.; 1941), Gramercy Alumina Holdings II, Inc. (Del.; 2806), NHB Capital, LLC (Del.; 0777), Noranda Alumina LLC (Del.; 4769), Noranda Aluminum Acquisition Corp. (Del.; 8458), Noranda Aluminum Holding Corp. (Del.; 8550), Noranda Bauxite Ltd. (Jamaica), Noranda Bauxite Holdings Ltd. (St. Lucia), Noranda Intermediate Holding Corp. (Del.; 3238) and Norandal USA, Inc. (Del.; 6477). The address of the Debtors' corporate headquarters is 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067.

prepetition secured creditors. In support of this motion (the “Motion”), the Debtors respectfully set forth as follows:

Preliminary Statement²

1. Prior to the filing of the Chapter 11 Cases, the Debtors, after protracted good faith and arm’s length negotiations with their prepetition secured lenders, successfully negotiated postpetition debtor-in-possession financing facilities (the “DIP Financing”) as described below to allow the Debtors to continue normal business operations in chapter 11, maintain vendor and supplier relationships, pay their employees and satisfy other working capital and operational requirements. Satisfaction of these key obligations is necessary to preserve and maintain the value of the Debtors’ estates.

2. By this Motion, the Debtors seek approval of, among other things, two separate, but coordinated facilities in the form of an asset-based revolving credit facility and a new money term loan facility (together, the “DIP Facilities”), as well as the use of the Pre-Petition Lenders’ (as defined below) collateral, including cash collateral, which together will provide the Debtors with sufficient liquidity to facilitate the Debtors’ restructuring and sale efforts.

3. One of the DIP Facilities is a senior secured asset-based revolving credit facility in a principal amount not to exceed \$130 million, including sub-facilities for swingline loans of up to \$10 million and letters of credit of up to \$50 million (the “ABL DIP Facility”), with Bank of America, National Association (“BofA”), acting as administrative and collateral agent (in such capacities, the “ABL DIP Agent”) for itself and a syndicate of banks, financial

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Interim Order or the applicable DIP Financing Documents.

institutions and other institutional lenders party to the Pre-Petition ABL Loan Agreement (as defined below). The ABL DIP Facility, like its predecessor prepetition facility of a similar structure, will be secured by, among other things, the Debtors' accounts receivable, inventory and the cash proceeds thereof. The ABL DIP Facility also provides that the Debtors will satisfy their obligations under the Pre-Petition ABL Facility (as defined below) by turning over the ABL Priority Collateral (as defined below) when available from time to time following entry of the Interim Order. The other DIP Facility is a senior secured new money multiple draw term loan facility in the principal amount of \$35 million (the "Term DIP Facility") to be provided by certain lenders party to the Debtors' Pre-Petition Term Loan Agreement (as defined below).

4. As set forth below, access to these DIP Facilities and Cash Collateral is critical to the Debtors' ability to continue to operate and to permit the Debtors to maximize value for all stakeholders. Moreover, the DIP Facilities are the best and only viable financing available to the Debtors.

5. For the last several months, the Debtors have worked with their advisors to explore strategic alternatives and devise a liquidity solution for their businesses. Despite exhaustive efforts, however, on the eve of the Petition Date, the Debtors do not have sufficient funds to continue to operate their businesses outside of chapter 11. Thus, as of the Petition Date, absent the liquidity offered by the DIP Facilities and related Cash Collateral arrangements, the Debtors would have to commence an immediate shut down of their operations to the detriment of their vendors, employees and all other stakeholders.

6. The DIP Facilities do however contemplate a comprehensive sale process for the Downstream Business (as defined in the First Day Declaration) pursuant to section

363(b) of the Bankruptcy Code (the “Downstream Business Sale Process”) designed to maximize value for these estates.

7. In sum, approval of the DIP Facilities and the use of Cash Collateral will enable the Debtors to satisfy their current and ongoing operating expenses, including postpetition wages and salaries, utilities, taxes, and vendor costs, and pursue the Downstream Business Sale Process while exploring alternative restructuring options through a chapter 11 plan. Absent the DIP Financing, the Debtors’ operations would come to an immediate halt, resulting in irreparable harm to their businesses, their going concern value, and ultimately, their ability to pursue the Downstream Business Sale Process – a course of action that the Debtors believe to be the most expeditious and effective means of maximizing value for their stakeholders.

Relief Requested

8. By this Motion, and pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtors seek entry of the DIP Orders granting the following relief:

- (a) authority for (i) the domestic Debtors (the “ABL DIP Borrowers”) to enter into and borrow under the ABL DIP Facility and (ii) Noranda Aluminum Acquisition Corporation (“NAAC” or the “Term DIP Borrower”) and Noranda Bauxite Ltd. (“NBL”), as the Jamaican Borrower (collectively with the Term DIP Borrower and the ABL DIP Borrowers (the “Borrowers”), to be the borrowers under the Term DIP Facility;
- (b) authority for each of the Debtors (other than NBL and Noranda Bauxite Holdings Ltd.) to serve as a guarantor under the Term DIP Facility (the “Guarantors”);

(c) authority for the Debtors to obtain postpetition financing consisting of

(i) the Post-Petition Credit Agreement substantially in the form attached hereto as Exhibit B,³ among the ABL DIP Borrowers, the lenders party thereto (the “ABL DIP Lenders”) and the ABL DIP Agent (together with all schedules, exhibits and annexes thereto, and as at any time amended, the “ABL DIP Loan Agreement”; together all such other instruments, and documents, including, without limitation, security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements, amendments, waivers, consents, other modifications, and intellectual property filings, and other documents, as at any time amended, executed and delivered in connection therewith, including, without limitation, the Security Documents (as defined in the ABL DIP Loan Agreement), the “ABL DIP Financing Documents”) and (ii) the Debtor-in-Possession Term Loan Agreement substantially in the form attached hereto as Exhibit C, among the Term DIP Borrower, the Guarantors, the lenders party thereto (the “Term DIP Lenders”) and together with the ABL DIP Lenders, the “DIP Lenders”) and Cortland Capital Market Services LLC, in its separate capacities as administrative and collateral agent (in such capacities, the “Term DIP Agent”, and collectively with the ABL DIP Agent, the “DIP Agents”) (together with all schedules, exhibits and annexes thereto, and as at any time amended, the “Term DIP Loan Agreement”; together all such other instruments, and documents, including, without limitation, security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements, amendments, waivers, consents, other modifications, and intellectual property filings, and

³ As of the Petition Date, the proposed ABL DIP Lenders were in the process of obtaining internal credit committee approval of the ABL DIP Loan Agreement.

other documents, as at any time amended, executed and delivered in connection therewith, including, without limitation, the Security Documents (as defined in the Term DIP Loan Agreement), the “Term DIP Financing Documents”, and collectively with the ABL DIP Financing Documents, the “DIP Financing Documents”);

(d) authorizing the Debtors to execute and enter into the DIP Financing Documents and to perform all such other and further acts as may be required in connection with the DIP Financing Documents;

(e) authorizing the Debtors to use proceeds of the DIP Financing as permitted in the DIP Financing Documents and in accordance with the Interim Order;

(f) granting automatically perfected (i) priming security interests in and liens on all of the ABL Priority Collateral (as defined below), the Term Priority Collateral (as defined below), and other property of the Debtors, if any, on which a lien is granted pursuant to the DIP Financing Documents (collectively, the “DIP Collateral”) and (ii) non-priming security interests in and liens with respect to Unencumbered Property (as defined in the Interim Order) upon which there are either pre-existing permitted senior liens or no pre-existing liens, to the DIP Agents for the benefit of the ABL DIP Credit Parties and Term DIP Credit Parties (collectively, the “DIP Credit Parties”) to the extent provided herein, and granting superpriority administrative expense status to the obligations under the DIP Financing Documents, in each case subject to the Carve-Out (as defined below) on the terms and subject to the relative priorities set forth in the DIP Financing Documents

(g) authority for the Debtors to provide adequate protection on the terms set forth in the Interim Order to the Pre-Petition ABL Credit Parties (as defined below) and

the Pre-Petition Term Credit Parties (as defined below and, collectively, the “Pre-Petition Credit Parties”) with respect to (i) that certain ABL Credit Agreement dated as of February 29, 2012 (as amended, restated supplemented or otherwise modified to date, the “Pre-Petition ABL Loan Agreement”) among NAAC, together with its domestic subsidiaries (other than NHB Capital, LLC), as co-borrowers and co-guarantors, and Holding, as parent guarantor, the lenders party thereto (collectively, the “Pre-Petition ABL Lenders”) and BofA, as administrative agent (the “Pre-Petition ABL Agent” and together with the Pre-Petition ABL Lenders, the “Pre-Petition ABL Credit Parties”) and (ii) that certain Credit Agreement dated as of February 29, 2012 (as amended, restated supplemented or otherwise modified to date, the “Pre-Petition Term Loan Agreement” and together with the Pre-Petition ABL Loan Agreement, the “Pre-Petition Loan Agreements”) among NAAC, as borrower, Holding and the other domestic subsidiaries (other than NHB Capital, LLC) as guarantors, the lenders party thereto (collectively, the “Pre-Petition Term Lenders” and, together with the Pre-Petition ABL Lenders, the “Pre-Petition Lenders”), and Cortland Capital Market Services LLC, as successor administrative agent⁴ (the “Pre-Petition Term Agent” and together with the Pre-Petition Term Lenders, the “Pre-Petition Term Credit Parties”);

(h) authorizing the Debtors to pay the principal, interest, fees, expenses, disbursements, and other amounts payable under the DIP Financing Documents as such amounts become due and payable;

⁴ Effective as of January 28, 2016, Bank of America resigned its position as Pre-Petition Term Agent, and Cortland Capital Market Services LLC was appointed its successor.

(i) authority for the Debtors to use “cash collateral,” as that term is defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”) and all other Pre-Petition Collateral (as defined below), subject to the terms of the Interim Order and the Intercreditor Agreement, dated as of February 29, 2012, among the Pre-Petition ABL Agent, the Pre-Petition Term Agent, Noranda Aluminum Holding Corporation, (“Holding”), NAAC and certain of their subsidiaries party thereto (the “Intercreditor Agreement”);

(j) authority to use Cash Collateral in the form of collections and proceeds of accounts receivable and other rights to payment (collectively, the “Pre-Petition Accounts”) (*less* the amount of \$10,000,000, which may be retained by the Debtors to pay expenses of operation following commencement of the Chapter 11 Cases) to repay the Pre-Petition ABL Debt (as defined below) until such amounts are paid in full;

(k) modification of the automatic stay set forth in section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Orders and the DIP Financing Documents;

(l) a waiver of any applicable stay with respect to the effectiveness and enforceability of the Interim Order (including under Bankruptcy Rule 6004);

(m) subject to entry of the Final Order, authority to grant liens to the DIP Lenders on the proceeds of any of the Debtors’ claims or causes of action under section 5 of the Bankruptcy Code (collectively, the “Avoidance Action Proceeds”);

(n) subject to entry of the Final Order, limiting the Debtors’ right to surcharge any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of

the Debtors under the “equities of the case” exception in section 552(b) of the Bankruptcy Code; and

(o) that this Court schedule a final hearing (the “Final Hearing”) to be held within 35 days of the entry of the Interim Order to consider entry of the Final Order approving the relief herein on a final basis and authorizing the Borrowers to borrow from the DIP Lenders under the DIP Financing Documents up to the full amount of the DIP Facilities and the Guarantors to guaranty all obligations owing to the DIP Lenders under the DIP Financing Documents.

Jurisdiction

9. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

Background

10. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

11. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in these cases.

12. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the *Declaration of Dale W. Boyles in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed substantially contemporaneously herewith, and the *Declaration of James H. Baird in Support of Debtors’ Motion for Entry of Interim and Final Orders to (i) Authorize Debtors in Possession to Obtain*

Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, 364; (ii) Grant Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507, (iii) Provide Adequate Protection to Pre-Petition Credit Parties, (iv) Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507, (v) Schedule Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c), and Local Rule 4001-2, and (iv) Grant Related Relief (the “Baird Declaration”), attached hereto as Exhibit D, in each case incorporated herein by reference.

The Debtors’ Pre-Petition Obligations

13. As of the Petition Date, the Debtors had approximately \$529.6 million in outstanding principal amount of secured indebtedness, consisting of (a) approximately \$61.5 million in direct borrowings (the “Pre-Petition ABL Loans”) and \$44.9 million in letters of credit, in each case the “Pre-Petition LCs”; together with the Pre-Petition ABL Loans, all other obligations of any Pre-Petition Obligor (as defined below) in respect of indemnities, guaranties and other payment assurances given by any Pre-Petition Obligor for the benefit of Pre-Petition ABL Credit Parties, and all interest, fees, costs, legal expenses and all other amounts heretofore or hereafter accruing thereon or at any time chargeable to any Pre-Petition Obligor in connection therewith, collectively referred to as the “Pre-Petition ABL Debt”), issued under a revolving senior secured asset-based credit facility (the “Pre-Petition ABL Facility”), and (b) approximately \$468 million (“Pre-Petition Term Loans”) under a term loan credit facility (the “Pre-Petition Term Facility”). See First Day Decl. ¶¶ 18–21. Additionally, the Debtors have approximately \$175 million in principal amount of 11% Senior Unsecured Notes due 2019 (the “Pre-Petition Senior Unsecured Notes”) outstanding and approximately \$16.9 million in principal amount of unsecured loan obligations outstanding under a credit agreement between Surela Investments Ltd. (“Surela”), a subsidiary of Glencore, plc and NBL, one of the Debtors.

I. Pre-Petition ABL Loan Agreement

14. On February 29, 2012, NAAC, together with its domestic Debtor subsidiaries (other than NHB Capital, LLC), as co-borrowers and co-guarantors, and Holding, as parent guarantor (collectively, whether in the capacity as borrower or guarantor, the “Pre-Petition Obligors”) entered into the Pre-Petition ABL Loan Agreement providing the Debtors with a \$250 million asset-based revolving credit facility. On May 15, 2013, the Debtors entered into that certain ABL Incremental Assumption Agreement No. 1, increasing the revolving loan commitment under the Pre-Petition ABL Facility by \$15 million to \$265 million. The borrowing availability under the Pre-Petition ABL Facility is capped by a borrowing base calculated by taking the sum of certain percentages of value of the Pre-Petition Obligors’ inventory and accounts receivables, subject to certain reserves and sub-limits. The Pre-Petition ABL Facility matures on February 28, 2017.

15. The Pre-Petition Obligors secured their obligations under the Pre-Petition ABL Loan Agreement by granting the Pre-Petition ABL Agent, for the benefit of the Pre-Petition ABL Lenders, a first-priority lien on substantially all of their accounts, deposits and securities accounts, inventory, and other current assets (collectively, the “ABL Priority Collateral”). The Pre-Petition ABL Loan Agreement is also secured by, subject to certain exclusions, a second-priority lien on substantially all real estate assets, intellectual property, equipment, capital stock and certain other collateral (other than ABL Priority Collateral) (collectively, the “Term Priority Collateral” and together with the ABL Priority Collateral, the “Pre-Petition Collateral”, and such liens and security interests, collectively, the “ABL Security Interests”).

II. Pre-Petition Term Loan Agreement

16. On February 29, 2012, the Pre-Petition Obligor entered into the Pre-Petition Term Loan Agreement providing the Debtors with a \$485 million term loan credit facility, consisting of an initial commitment of \$325 million, an incremental term loan of \$110 million, and a second incremental term loan of \$50 million. The Pre-Petition Term Facility matures on February 28, 2019.

17. The Pre-Petition Obligor secured their obligations under the Pre-Petition Term Loan Agreement by granting the Pre-Petition Term Agent, for the benefit of the Pre-Petition Term Lenders, a first-priority lien on the Term Priority Collateral and a second-priority lien on the ABL Priority Collateral (such liens and security interests, collectively, the “Term Security Interests”).

III. Pre-Petition Unsecured Debt

18. In March 2013, NAAC issued \$175 million in aggregate principal amount of the Pre-Petition Senior Unsecured Notes pursuant to that certain indenture dated March 8, 2013 among NAAC, the guarantors party thereto and U.S. Bank National Association, as trustee.

19. Additionally, NBL entered into an unsecured credit agreement dated as of December 29, 2012 (as amended, the “Glencore Credit Agreement”) with Surela, as lender. Under the Glencore Credit Agreement, Surela agreed to provide up to \$22.5 million to fund capital improvements related to port expansion and railing improvements designed to increase shipping capacity and improve the cost structure at the Debtors’ St. Ann bauxite mining operation. The amounts outstanding under the Glencore Credit Agreement are guaranteed on an unsecured basis by Holding.

IV. Other Debt

20. On July 7, 2014, Noranda Alumina LLC and First National Bank (“CalFirst”) entered into a contract (as amended, modified, or restated from time to time, the “Mid-Stream Contract”) to construct infrastructure and acquire equipment to increase the bauxite shipment unloading capacity of the Debtors’ alumina refinery in Gramercy, Louisiana (the “Mid-Stream Project”). Pursuant to the Mid-Stream Contract, CalFirst was to advance funding of up to approximately \$12.2 million during the Mid-Stream Project, and Noranda Alumina LLC is obligated to pay interest on the amounts advanced.

21. The Mid-Stream Project was initially scheduled to conclude on September 30, 2015, at which point the funding advanced was to convert to a capital lease. However, by September 30, 2015, the Mid-Stream Project had not been completed, and CalFirst had advanced funds totaling approximately \$3.8 million. Accordingly, on October 9, 2015, CalFirst and Noranda Alumina LLC amended the Mid-Stream Contract (the “Amended Mid-Stream Contract”), pursuant to which CalFirst agreed (i) to advance an additional approximately \$1.2 million, and (ii) to advance further funds only if Noranda Alumina LLC posted letters of credit of at least 90% of any such amounts.

22. As of the Petition Date, CalFirst has advanced approximately \$7.3 million under the Amended Mid-Stream Contract. Noranda Alumina LLC’s obligations under the Amended Mid-Stream Contract are secured by an irrevocable standby letter of credit in the amount of \$6.6 million, and are guaranteed on an unsecured basis by Holding, NAAC, and certain other subsidiaries.

23. On June 4, 2015 Noranda Aluminum, Inc. (“NAI”) entered into a Master Lease Agreement and Lease Schedule (the “Rod Mill Lease”) with NXT Capital, LLC (“NXT”). Under the Rod Mill Lease, NAI leased from NXT all equipment, machinery, parts and

components known as Rod Mill No. 3 (the “Rod Mill”)—a piece of machinery used to produce rod in the New Madrid Facility (as defined in the First Day Declaration). NAI leased the Rod Mill from NXT for a term of sixty (60) months beginning June 4, 2015, with a monthly rent of approximately \$281,000. The Rod Mill Lease requires NAI to meet certain pre-determined output metrics with respect to the Rod Mill, and NAI’s obligations under the Rod Mill Lease are secured by NAI’s right, title, and interest in the Rod Mill, and are guaranteed on an unsecured basis by Holding.⁵

Summary Terms of DIP Facilities⁶

24. Pursuant to Bankruptcy Rule 4001(b), (c) and (d), the following is a concise statement and summary of the proposed material terms of the DIP Facilities, as specified in the DIP Financing Documents and the DIP Orders:⁷

Material Terms	ABL DIP Facility	Term DIP Facility
<u>Borrower</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Noranda Aluminum Holding Corporation, Noranda Aluminum Acquisition Corporation, Norandal USA, Inc., Noranda Aluminum, Inc., Noranda Alumina LLC, Noranda Intermediate Holdings Company, Gramercy Alumina Holdings Inc., Gramercy Alumina Holdings II, Inc., NHB Capital, LLC See ABL DIP Loan Agreement, Preamble; Interim Order Recital (2)	Noranda Aluminum Acquisition Corporation Noranda Bauxite Limited See Term DIP Loan Agreement, Preamble; Interim Order Recital (2)

⁵ In addition to the Rod Mill Lease, on December 8, 2009 and May 23, 2010, NAI entered into loan agreements with the Missouri Department of Economic Development (“Missouri DED”) and New Madrid County, Missouri (“New Madrid County”), the proceeds of which were to be used for certain limited purposes in connection with NAI’s facilities in New Madrid County, including purchase of equipment, machinery, tools, supplies, fixtures and similar improvements or replacement of existing structures or machinery. Pursuant to the loan agreements, the Missouri DED extended loans to New Madrid County who in turn extended two forgivable loans to NAI, in the amounts of \$1 million and \$2.5 million. The advances under these loan agreements become due and payable solely upon the occurrence of certain events of default, none of which has occurred as of the Petition Date. The advances also amortize over time and the Debtors estimate there is a remaining contingent liability of approximately \$850,000 under these loan agreements.

⁶ The following summary is included for convenience only and is qualified in its entirety by reference to the definitive DIP Financing Documents, which shall control in the event of any inconsistency.

⁷ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the ABL DIP Credit Agreement and/or Term DIP Loan Agreement (together, the “DIP Loan Agreements”).

Material Terms	ABL DIP Facility	Term DIP Facility
<u>Guarantors</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	N/A	Noranda Aluminum Holding Corporation; Noranda Intermediate Holdings Corporation; Noranda Aluminum Inc.; Gramercy Alumina Holdings Inc.; Norandal USA, Inc.; Gramercy Alumina Holdings II, Inc.; Noranda Alumina LLC; NHB Capital, LLC. See Term DIP Loan Agreement, Preamble; Interim Order Recital (2)
<u>DIP Lenders</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	A syndicate of banks, financing institutions and other institutional lenders party to the Pre-Petition ABL Loan Agreement. See ABL DIP Loan Agreement, Preamble	Certain lenders party to the Pre-Petition Term Loan Agreement.
<u>Agent</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Bank of America, N.A. See ABL DIP Loan Agreement, Preamble; Interim Order Recital (1)	Cortland Capital Market Services LLC See Term DIP Loan Agreement, Preamble; Interim Order Recital (1)
<u>Commitments</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	\$130 million secured superpriority asset-based revolving credit facility, less the amount of Pre-Petition ABL Debt outstanding and subject to a Borrowing Base. See ABL DIP Loan Agreement § 2.01; Interim Order ¶ 1(b)	\$35 million new money secured superpriority term loan facility. See Term DIP Loan Agreement § 2.01; Interim Order ¶ 1(b)
<u>Borrowing Limits/ Availability/ Borrowing Base</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Availability under the Revolving DIP Facility is limited by borrowing base requirements and applicable reserves, including discretionary reserves established in the ABL DIP Agent's reasonable credit judgment. The borrowing base is equal to the lesser of (x) Revolving Facility Commitments minus the Reserves and (y) the sum of (a) 85% of the net amount of eligible accounts receivable <u>plus</u> (b) the lesser of (i) 80% of the original cost or market value of Eligible Inventory and (ii) 90% of the Orderly Liquidation Value of Eligible Inventory <u>plus</u> (c) Incremental Availability not to exceed \$7,358,491, minus (from the sum of clauses (a), (b) and (c) the Reserves). See ABL DIP Loan Agreement § 2.02; Interim Order ¶ 1(b) See ABL DIP Loan Agreement §§ 1.01, 2.02; Interim Order ¶ 1(b)	Initial Draw: \$25 million Second Draw: \$10 million The Jamaican Borrower can borrow up to a capped amount (first 90 days up to \$6,000,000 and thereafter an amount to be agreed by the Lenders in their sole discretion) See Term DIP Loan Agreement § 2.01; Interim Order ¶ 1(b)
<u>Use of Proceeds</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Proceeds of the DIP Facilities generally may be used for working capital and general corporate purposes materially consistent with the Budget (as defined below), including to pay fees, costs and expenses incurred in connection with these Chapter 11 Cases, subject to certain specified prohibitions. See ABL DIP Loan Agreement § 6.08; Term DIP Loan Agreement § 4.12.	
<u>Interest Rates</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Borrowers may access either Revolving Facility Loans, Incremental Revolving Facility Loans, or Swing Line Loans at either the Base Rate or the Eurodollar Rate.	The Borrowers may elect, subject to certain conditions, either the (A) Base Rate (subject to 2% floor) or (B) Eurodollar Rate (subject to 1% floor), in each case plus the Applicable Margin:

Material Terms	ABL DIP Facility	Term DIP Facility
	<p><u>Revolving Facility:</u></p> <ul style="list-style-type: none"> Base Rate: Base Rate + 1.50% Eurodollar Rate: Adjusted Eurodollar Rate plus 2.50% <p><u>Incremental Revolving Facility:</u></p> <ul style="list-style-type: none"> Base Rate: Base Rate + 3.00% Eurodollar Rate: Adjusted Eurodollar Rate plus 4.00% <p><u>Swing Line:</u> Shall bear interest at Base Rate.</p> <p>See ABL DIP Loan Agreement § 1.01, 2.02, 2.03, 2.04, 2.13, and 2.15; Interim Order ¶ 1(b)</p>	<p>Base Rate + 10.00% Eurodollar Rate + 11.00%</p> <p>See Term DIP Loan Agreement § 2.10</p>
<u>Default Interest</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p>2.00% per annum plus the interest rate otherwise applicable thereto</p> <p>See ABL DIP Loan Agreement § 2.13; Term DIP Loan Agreement § 2.10(c)</p>	
<u>Maturity and Termination Date</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p>The earliest of, among other things, (i) nine months following the Closing Date, (ii) the consummation of a sale of all or substantially all of the assets of the Borrower(s) pursuant to a section 363 sale or (iii) the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases acceptable to the DIP Lenders.</p> <p>See Term DIP Loan Agreement § 1.01; ABL DIP Loan Agreement §§ 1.01, 2.08</p>	
<u>Fees</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p>Commitment Fee: 0.50% of aggregate commitments</p> <p>Unused Line Fee: 0.50% (applicable to Revolving Facility and Incremental Facility Loans)</p> <p>See ABL DIP Loan Agreement § 2.12</p>	<p>Commitment Fee: 4.0% of all Commitments, due and payable on the Closing Date</p> <p>Term DIP Agent Fees: payable as set forth in a separate fee letter.⁸</p> <p>See Term DIP Loan Agreement § 2.09</p>
<u>Approved Budget</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p>Proceeds of the DIP Facilities may be used as materially consistent with a budget annexed to this Motion, as updated from time to time in accordance with the DIP Financing Documents. Proceeds of ABL DIP Facility may not be downstreamed to any affiliate that is not a Borrower. See Interim Order, ¶ 1, Annex A; ABL DIP Loan Agreement, § 6.08, Term DIP Loan Agreement, § 4.12.</p>	
<u>Covenants</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p>Usual and customary for financings of this type:</p> <p>Affirmative Covenants: Including but not limited to (1) site visits and property</p>	<p>Usual and customary for financings of this type:</p> <p>Affirmative Covenants: Including but not limited to (1) site visits and property inspections, (2) maintaining financial statements consistent with</p>

⁸ Other fees are set forth in the confidential fee letter between the Debtors and the Term DIP Agent (the “Term DIP Agent Fee Letter”). The Debtors have filed, contemporaneously herewith, a motion to file under seal the Term DIP Agent Fee Letter. The Debtors will provide a copy of the confidential Term DIP Agent Fee Letter to the Court, the U.S. Trustee, and to any official committee of unsecured creditors appointed in the Debtors’ Chapter 11 Cases upon request. The Debtors request that the Term DIP Agent Fee Letter and their contents be kept confidential pursuant to Bankruptcy Rule 9018, and be limited to the parties listed above (including being limited to only the professionals for any appointed committee), to protect the sensitive commercial information of the Term DIP Agent Fee Letter contained therein.

Material Terms	ABL DIP Facility	Term DIP Facility
	<p>inspections (limited to two per year), (2) maintaining financial statements consistent with GAAP and other financial information, (3) delivery of financial statements, (4) provision of information regarding collateral, (5) maintenance of properties and adequate insurance, (6) establishing cash dominion account and delivery and maintenance of control agreements for bank accounts, (7) use proceeds of Loans pursuant to Approved Budget and in accordance with the ABL DIP Loan Agreement, (8) payment of adequate protection payments, (9) achievement of certain milestones and (10) maintain Term DIP Facility.</p> <p>See ABL DIP Loan Agreement Article 6</p> <p>Negative Covenants: Including but not limited to restrictions on: mergers/consolidations/sales, certain indebtedness, investments/loans/advances, liens, affiliate transactions, restricted payments, and modification of certain material documents.</p> <p>See ABL DIP Loan Agreement Article 7</p> <p>Minimum Liquidity: Liquidity may not be less than (i) \$5,000,000 or (ii) after consummation of a 363 sale resulting in a workforce reduction, the greater of \$2,500,000 or the highest aggregate weekly amount of such payroll and payroll taxes.</p> <p>See ABL DIP Loan Agreement § 7.22</p>	<p>GAAP and other financial information, (3) delivery of financial statements, (4) provision of information regarding collateral, (5) maintenance of properties and adequate insurance, (6) maintenance of Additional Collateral Account for segregation of net proceeds of certain events, (7) use proceeds of Loans pursuant to Approved Budget and in accordance with the Term DIP Loan Agreement, (8) payment of adequate protection payments, (9) achievement of certain milestones and (10) maintain ABL Dip Facility.</p> <p>See Term DIP Loan Agreement Article 6</p> <p>Negative Covenants: Including but not limited to restrictions on: mergers/consolidations/sales/acquisitions, certain indebtedness, investments/loans/advances, liens, affiliate transactions, restricted payments, and modification of certain material documents.</p> <p>See Term DIP Loan Agreement Article 7</p> <p>Minimum Liquidity: U.S. Borrower must maintain at least \$5,000,000 cash in hand at all times.</p> <p>See Term DIP Loan Agreement § 6.15</p>
<u>Voluntary Prepayments/Reductions of Commitments</u>	<p>Borrowers have the right at any time to repay any Loan without premium or penalty.</p> <p>See ABL DIP Loan Agreement § 2.11</p>	<p>Borrowers have the right to repay any Loan without premium or penalty upon satisfaction of certain notice requirements.</p> <p>See Term DIP Loan Agreement § 2.08(a)</p>
<u>Mandatory Prepayments</u>	<p>Mandatory Prepayments:</p> <ul style="list-style-type: none"> • Immediately payable upon occurrence of Out of Formula condition • If Letters of Credit exceed L/C sublimit, Borrowers must immediately deposit Cash Collateral in amount of excess • If Swing Line Loans exceed Swing Line sublimit, Borrowers must immediately pay Swing Line Loans in aggregate amount equal to such excess <p>See ABL DIP Loan Agreement § 2.11</p>	<p>Mandatory Prepayments: All Net Proceeds from the sale of any Term DIP Priority Collateral will be applied to prepay the Term DIP Loans and the Pre-Petition Term Loans. See Term DIP Loan Agreement § 2.08(c)</p>

Material Terms	ABL DIP Facility	Term DIP Facility
<p><u>Adequate Protection Roll-Up</u></p>	<p>Upon entry of the Interim Order, (i) all collections and proceeds of accounts receivable and other rights to payment constituting ABL Priority Collateral and [(ii) payments for use of Pre-Petition Inventory by Debtors will be applied to pay the Pre-Petition ABL Debt until Full Payment of the Pre-Petition ABL Debt]; <u>provided</u> that the Debtors shall be entitled to retain Cash Collateral in their possession on such date in an amount up to but not exceeding \$10,000,000, which Cash Collateral shall be used by the Debtors solely for such purposes and in such amounts that proceeds of ABL DIP Loans may be used hereunder and under the ABL DIP Loan Agreement, and at least \$5,000,000 of such amount shall be expended by Debtors prior to their requesting any ABL DIP Loans. [Any remaining Pre-Petition ABL Debt shall be rolled up upon entry of the Final Order.]</p> <p>See ABL DIP Loan Agreement ¶ 2.10; Interim Order ¶¶ 7(d) and (e)</p> <p>Pre-petition letters of credit shall be treated as having been issued under the ABL DIP Loan Agreement.</p> <p>See ABL DIP Loan Agreement § 1(e)</p>	<p>N/A</p>
<p><u>Conditions Precedent</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>Including, but not limited to:</p> <ul style="list-style-type: none"> • Receipt of 13-Week Projection, Borrowing Base Certificates, Budget, and Borrowing Request • Payment of fees and expenses • Satisfaction of Collateral Requirement • First Day Orders in form and substance reasonably satisfactory to the ABL DIP Agent and requisite ABL DIP Lenders • Entry of the Interim Order prior to closing or not later than 5 days following the Petition Date • No trustee or examiner is appointed in the Chapter 11 Cases • DIP Liens are created and perfected upon entry of the Interim Order. • No Default or Event of Default exists <p>See ABL DIP Loan Agreement § 5.02</p>	<p>Including, but not limited to:</p> <ul style="list-style-type: none"> • Receipt of 13-Week Projection, Budget and Borrowing Request • Payment of fees and expenses • Satisfaction of Collateral and Guarantee Requirement • First Day Orders in form and substance reasonably satisfactory to the Term DIP Agent and requisite Term DIP Lenders • Entry of the Interim Order prior to closing or not later than 5 days following the Petition Date • No trustee or examiner is appointed in the Chapter 11 Cases • DIP Liens are created and perfected upon entry of the Interim Order. • No Default or Event of Default exists. <p>See Term DIP Loan Agreement § 5.02</p>

Material Terms	ABL DIP Facility	Term DIP Facility
<u>Collateral and Priority</u> <i>Bankruptcy Rule 4001(c)(1)(B)(i) and (ii)</i>	<p>The ABL DIP Obligations will be secured by perfected first-priority liens pursuant to Sections 364(c) and (d) on all assets that constitute ABL Priority Collateral, and a junior lien on all Term Priority Collateral.</p> <p>Superpriority administrative claim against the Debtors, subject to the Carve-Out.</p> <p>See Interim Order ¶¶ 3 and 4</p>	<p>The Term DIP Obligations will be secured by a perfected first-priority lien on all assets that constitute Term DIP Loan Priority Collateral, and a junior lien on all ABL DIP Priority Collateral.</p> <p>Superpriority administrative claim against the Term Debtors, subject to the Carve-Out.</p> <p>See Interim Order ¶¶ 3 and 4</p>
<u>Automatic Perfection of Liens</u> <i>Bankruptcy Rule 4001(c)(1)(B)(vii)</i>	<p>Upon entry of the Interim Order, the Collateral Agent will have a valid and perfected lien on all Collateral, including intellectual property and real property.</p> <p>See DIP Loan Agreements §4.17; Interim Order ¶ 3</p>	
<u>Debtors Stipulations</u> <i>Bankruptcy Rule 4001(c)(1)(B)(iii) and (viii)</i>	<p>The Debtors make certain customary admissions and stipulations with respect to the amounts outstanding under the respective Pre-Petition Loan Agreements, the validity, perfection, enforceability and priority of the liens and security interests securing the Pre-Petition Loan Agreements, the value of the Pre-Petition Collateral, the non-existence of any grounds for the Debtors to challenge any aspect of the Pre-Petition Loan Agreements or the respective holders thereof and a release by the Debtors with respect to the foregoing.</p> <p>See Interim Order Findings ¶ B; Decretal ¶ 22</p>	
<u>Adequate Protection</u> <i>Bankruptcy Rule 4001(b)(1)(B)(iv) and (c)(1)(B)(ii)</i>	<p>The Pre-Petition Creditor Parties (collectively, the “<u>Adequate Protection Parties</u>”) shall receive Adequate Protection Claims to the extent of any diminution in the value of their interests in the Pre-Petition Collateral from and after the Petition Date. As adequate protection for their applicable Adequate Protection Claims, the Adequate Protection Parties will be granted the following: (i) current cash payment of (A) interest each month, in arrears, on the first of the month, at the non-default interest rate under the applicable Pre-Petition Loan Documents and (B) reasonable professional fees and expenses of the Pre-Petition Agents, DIP Agents, DIP Lenders and the Pre-Petition Term Lender Group as set forth in the Interim Order and DIP Financing Documents; (ii) new or replacement liens on the DIP Collateral that are junior and subordinate only to the Carve-Out, the applicable DIP Liens and any liens that are senior to the applicable DIP Liens as and to the extent expressly provided in the Interim Order; (iii) superpriority claims under section 507(b) of the Bankruptcy Code, as subject to the Carve-Out and junior only to the Superpriority Claims; and (iv) reporting and information rights substantially similar to those contained in the DIP Financing Documents. The Pre-Petition ABL Agent will also be entitled to the Adequate Protection Roll-Up described above.</p> <p>See Interim Order ¶¶ 7, 8.</p>	
<u>Events of Default</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p>Events of Default: Usual and customary for financings of this type, including:</p> <ul style="list-style-type: none"> • non-payment of principal, interest and fees, subject to grace period • defaults under affirmative and negative covenants • breaches of representations and warranties • breach of covenants, subject to grace period • Loan Documents or provision thereof ceases to be valid • Change of Control • Loss, theft, damage or destruction of Inventory not fully covered by insurance, 	<p>Events of Default: Usual and customary for financings of this type, including:</p> <ul style="list-style-type: none"> • non-payment of principal, interest and fees, subject to grace period • defaults under affirmative and negative covenants • breaches of representations and warranties • breach of covenants, in some cases, subject to grace period • Loan Documents or provision thereof ceases to be valid • Change of Control • an unstayed money judgment issued against any Borrower in an aggregate amount of \$500,000

Material Terms	ABL DIP Facility	Term DIP Facility
	<p>if the amount not covered by insurance exceeds (i) \$2,000,000 prior to sale of Downstream Business, or (ii) \$250,000 thereafter</p> <ul style="list-style-type: none"> • an unstayed money judgment issued against any Borrower in an aggregate amount of \$1,000,000 or more, subject to grace period • Borrower filing motion to sell assets (other than any sale of assets pursuant to the Downstream Sale Process or the Upstream Sale Process or any other sale of assets set out in the Acceptable Business Plan) with a value greater than \$500,000 out of the ordinary course without requisite consent • non-permitted prepetition debt payments • seeking authority to sell substantially all of any the Debtors' assets without requisite consent • failure to comply with certain ERISA regulations • seeking to invalidate liens securing the DIP collateral or otherwise challenging ABL DIP Lender and Pre-Petition ABL Lender claims • order appointing a chapter 11 trustee or examiner • order changing venue that is not reversed or vacated within 60 days • order converting or dismissing the Chapter 11 Cases • Failure to meet milestones • Event of Default under Term DIP Loan Agreement that is not waived or cured <p>See ABL DIP Loan Agreement §8.01</p>	<p>or more</p> <ul style="list-style-type: none"> • entry of an order vacating the automatic stay to foreclose on property or assets with a value in excess of \$500,000 • Loan Party filing motion to sell assets (other than any sale of assets pursuant to the Downstream Sale Process or the Upstream Sale Process or any other sale of assets set out in the Acceptable Business Plan) with a value greater than \$500,000 in the ordinary course • non-permitted prepetition debt payments • seeking invalidation of liens securing the DIP collateral or otherwise challenging Term DIP Lender and Pre-Petition Term Lender claims • confirmation of a non-Acceptable Reorganization Plan • modification or extension of the Interim Order without certain consent • failure to have a Final Order entered within 45 days of entry of Interim order • failure of a Final Order to include waivers of Sections 506(c) and 552(b) of the Bankruptcy Code • failure to comply with certain ERISA regulations • order appointing a chapter 11 trustee or examiner • order changing venue that is not reversed or vacated within 10 days • order converting or dismissing the Chapter 11 Cases • failure to meet milestones • Event of Default under DIP ABL Loan Agreement that is not waived or cured <p>See Term DIP Loan Agreement §8.01</p>
<p><u>Carve-Out</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p>“<u>Carve-Out</u>” means the sum of (i) all unpaid fees required to be paid (a) to the Clerk of this Court and (b) to the Office of the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(c); (ii) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code not to exceed [\$50,000]; and (iii) in the event of (x) an occurrence and during the continuance of an “Event of Default” as that term is defined in any of the DIP Financing Documents (an “<u>Event of Default</u>”), and delivery (which may be by email) of notice (a “<u>Carve-Out Trigger Notice</u>”) to counsel for the Debtors and counsel for the Committee (as defined below), or (y) consummation of the sale of substantially all of the Debtors’ assets, comprising the sum of (A) all allowed unpaid fees, expenses, and disbursements (regardless of when such fees, expenses, and disbursements become allowed by order of the Court) (other than for a Prohibited Purpose) incurred collectively by the Debtors and the Committee in an aggregate amount not to exceed [\$3,000,000] for services provided subsequent to receipt of the Carve-Out Trigger Notice (collectively, the “<u>Post-Trigger Carve-Out</u>”), <u>plus</u> (B) professional fees and expenses that were incurred or accrued by the Debtors or the Committee for services rendered prior to receipt of the Carve-Out Trigger Notice (regardless of when such fees, expenses, and disbursements become allowed by order of the Court), <u>less</u> any professional fees and expenses actually funded under the ABL DIP Facility or Term DIP Facility prior to receipt of the Carve-Out Trigger Notice, to the extent such fees and expenses are allowed by the Court</p>	

Material Terms	ABL DIP Facility	Term DIP Facility
	See Interim Order ¶ 12	
<u>Use of Cash Collateral</u> <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>	<p>Prior to Full Payment of the DIP Obligations, the Debtors shall not be authorized to use any Cash Collateral except to fund the Carve-Out, and to pay (or, in the case of letters of credit, provide cash collateral for such contingent obligations) Pre-Petition ABL Debt, ABL DIP Obligations, Pre-Petition Term Debt, and Term DIP Obligations in accordance with the Intercreditor Agreement and the lien and claim priorities set forth in the Interim Order and the Final Order; <u>provided, however</u>, that prior to the Full Payment of the Pre-Petition ABL Debt and ABL DIP Obligations (i) that no proceeds of ABL Priority Collateral shall be used to pay any Pre-Petition Term Debt or Term DIP Credit Extensions, and no proceeds of Term Priority Collateral shall be used to pay any Pre-Petition ABL Debt or ABL DIP Credit Extensions, and prior to the Full Payment of any Pre-Petition Term Debt and Term DIP Obligations (ii) in no event shall any proceeds of ABL Priority Collateral be used to make any payment, advance, intercompany advance or transfer, or any other remittance or transfer whatsoever to any Debtor or affiliate of Debtors that is not a "Borrower" under, and as defined in, the ABL DIP Credit Agreement, other than for purchases of inventory in the ordinary course of business.</p> <p>See Interim Order ¶ 6</p>	
<u>Milestones</u> <i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i>	<ul style="list-style-type: none"> • Within 15 business days following the Petition Date, file a motion seeking approval of Downstream Sale Process. • Within 35 days of the Petition Date, entry of the Final DIP Order • Within 45 business days of the Petition Date, the New Madrid smelter shall be idled • Within 45 days of Petition Date, entry of an order approving the Downstream Sale Process. • Within 60 days of the Petition Date, entry of either an order approving rejection of the Sherwin Contract or an order approving a Sherwin Settlement pursuant to Rule 9019. • Within 60 days of the Petition Date, provision of an Acceptable Business Plan. • Within 95 days of the Petition Date, entry of a sale approving the Downstream Asset Sale. • Within 120 days of the Petition Date, close of the sale of the Downstream Business. • Within 90 days of the Petition Date, filing of an acceptable Reorganization Plan and related disclosure statement or the Upstream Sale Motion; • If Plan Filing Date occurs, the Debtors will comply with the following Plan Milestones: <ul style="list-style-type: none"> ○ Within 35 days of filing the Reorganization Plan, entry of an order approving the disclosure statement and plan solicitation procedures. ○ Within 90 days after filing the Reorganization Plan, entry of an order confirming the Reorganization Plan. ○ Within earlier of 30 days after entry of the Confirmation Order and 210 days after the Petition Date. ○ If the Debtors do not comply with any Plan Milestones, file the Upstream Sale Motion within 5 Business Days. <p>See Term DIP Loan Agreement § 6.12; ABL DIP Loan Agreement § 6.20; Interim Order ¶ 18</p>	
<u>Section 506(c) Waiver</u> <i>Bankruptcy Rule 4001(c)(1)(B)(x)</i>	<p>Upon entry of the Final Order, no costs or expenses of administration shall be imposed upon any DIP Credit Party, any Pre-Petition Credit Party, or any of the Pre-Petition Collateral or DIP Collateral pursuant to Section 506(c) of the Bankruptcy Code.</p> <p>See Interim Order ¶ 11</p>	
<u>Section 552(b) Waiver</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<p>Upon entry of the Final Order, the "equities of the case" exception in section 552(b) of the Bankruptcy Code is waived with respect to secured claims held by the prepetition lenders and DIP Agent and DIP Lenders.</p> <p>See Interim Order ¶ 9</p>	
<u>Liens on Avoidance Actions</u> <i>Bankruptcy Rule 4001(c)(1)(B)(xi)</i>	<p>Subject to the entry of the Final Order, valid, binding, continuing, enforceable, fully perfected security interests and liens upon the proceeds (the "<u>Avoidance Proceeds</u>") of all of the Debtors' claims and causes of action pursuant to Sections 502(d), 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code (the "<u>Avoidance Claims</u>"). Subject to entry of the Final Order, the Avoidance Proceeds will be shared among DIP Agents (for the benefit of their respective DIP Credit Parties), with 40.3% to be remitted to ABL DIP Agent and 59.7% to be remitted to Term DIP Agent.</p>	

Material Terms	ABL DIP Facility	Term DIP Facility
	See Interim Order ¶ 3 (d)	
<u>Indemnification</u> <i>Bankruptcy Rule 4001(c)(1)(B)(ix)</i>	The DIP Financing Documents contain customary indemnification provisions by each Borrower (as defined in each of the ABL DIP Loan Agreement and Term DIP Loan Agreement) (jointly and severally) in favor of the DIP Agents, the DIP Lenders, letter of credit issuing banks, and Related Parties of each of the foregoing. See ABL DIP Loan Agreement, § 10.04(b); Term DIP Loan Agreement, § 10.04(b).	
<u>Release, Waivers or Limitation on any Claim or Cause of Action</u> <i>Bankruptcy Rule 4001(c)(1)(B)(viii)</i>	Subject to the Orders, the Debtors grant the DIP Agents a broad release and waiver of claims arising in respect of the Pre-Petition Loan Documents and the DIP Financing Documents. See Interim Order § 27	
<u>Automatic Stay Waiver</u> <i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i>	The automatic stay provisions of Section 362 of the Bankruptcy Code are modified and lifted to the extent necessary to implement the provisions of the Interim Order and the DIP Financing Documents, thereby permitting each Agent to receive collections and proceeds of Collateral for application to the DIP Obligations, Pre-Petition ABL Debt or Pre-Petition Term Debt as and to the extent provided herein, to file or record any UCC-1 financing statements, mortgages, deeds of trust, assignments, pledges, security deeds and other instruments and documents evidencing or validating the perfection of any DIP Liens or Adequate Protection Liens, and to enforce any DIP Liens and Adequate Protection Liens as and to the extent authorized by the Interim Order. See Interim Order § 20	

THE DEBTORS' LIQUIDITY NEEDS AND EFFORTS TO OBTAIN DIP FINANCING

25. As more fully set forth in the First Day Declaration, the Debtors' chapter 11 filing is the result of a number of factors, principal among them is the sustained and dramatic decline in the price of aluminum. Certain other exacerbating factors further pressured the Debtors' already strained businesses, including (i) multiple incidents at the New Madrid Facility (as defined in the First Day Declaration); (ii) the substantial increase in rates the Debtors pay for electricity to power the New Madrid Facility; (iii) an unfavorable outcome in an arbitration regarding a production levy payable to the government of Jamaica in connection with the Debtors' bauxite mining operation; (iv) a bauxite supply contract with one of NBL's significant customers that is substantially below-market, thereby increasing NBL's operational challenges; and (v) significant labor-related liabilities. By the end of December 2015, the Debtors were

facing an imminent liquidity crisis and it became clear that the Debtors would need to restructure through chapter 11 cases.

26. As discussed in the Baird Declaration, the Debtors urgently require both the ability to use Cash Collateral and the incremental financing provided by the DIP Facilities. The Debtors' available and projected Cash Collateral alone is insufficient to fund the Chapter 11 Cases. In fact, the Debtors would run out of the liquidity required to operate their businesses in the first week of the Chapter 11 Cases without the DIP Financing and use of Cash Collateral. *See Baird Decl.* ¶ 13. Thus, the credit provided under the DIP Facilities is essential to the continuity of the Debtors' operations and timely pursuit of the contemplated Downstream Business Sale Process, which serves the interests of all of the Debtors' economic stakeholders. Furthermore, the availability of Cash Collateral and credit under the DIP Facilities will instill much needed confidence in parties that are critical to the success of the Chapter 11 Cases, including the Debtors' employees, vendors, regulators and customers, as well as potential bidders for the Debtors' assets. This assurance greatly enhances the likelihood that the Debtors will continue to receive the support of key constituents during the Chapter 11 Cases, and increases the opportunity for a robust, competitive sale process that will yield the greatest recovery for the Debtors' estates and creditors. The potential consequences to the Debtors of a failure to obtain adequate funding would be dire: among other things, the Debtors could be forced to idle or shut down additional facilities, lose valuable customer accounts, and liquidate on a piecemeal basis, resulting in irreparable harm to the Debtors and their stakeholders.

27. It is therefore clear that the Debtors require committed postpetition financing immediately. The DIP Facilities represent the best available sources of such financing under the circumstances. As set forth in the Baird Declaration, the Debtors, through their

investment banker, PJT Partners LLP (“PJT Partners”), contacted several potential alternative providers of DIP financing to attempt to procure postpetition financing. *See* Baird Decl. ¶ 20. No prospective lender outside the Debtors’ capital structure expressed serious interest in providing it. While difficult market conditions made alternative providers of financing less willing to engage with the Debtors, the existence of the valid and perfected ABL Security Interests and the Term Security Interests placed the Debtors in the untenable position of either (i) engaging in a priming fight with the Pre-Petition Credit Party whose liens are primed, (ii) obtaining the consent of the party holding the interests to be primed, (iii) arranging a refinancing of the Pre-Petition ABL Facility and/or Pre-Petition Term Facility or (iv) locating a third-party postpetition lender willing to provide DIP Financing on an unsecured basis or secured by liens junior in priority to the approximately \$530 million of prepetition secured debt. As a result, PJT Partners’ DIP Financing marketing process involved contacting unrelated third-parties, as well as the Pre-Petition ABL Agent and the largest Pre-Petition Term Lenders (the “Pre-Petition Term Lender Group”), to discuss the Debtors’ financial condition and liquidity issues and to explore potential restructuring scenarios. In January 2016, the Pre-Petition ABL Agent and the Pre-Petition Term Lender Group made it patently clear that they would not consent to a priming of their security interests in the Pre-Petition Collateral. *See* Baird Decl. ¶ 19. In addition, the Pre-Petition ABL Agent, on behalf of the Pre-Petition ABL Lenders, and the Pre-Petition Term Lender Group indicated that they would not consent to the use of Cash Collateral constituting their respective priority collateral without participating in the DIP Financing. *Id.* Despite these limitations, the Debtors successfully negotiated postpetition financing from the only viable sources on terms fair and reasonable under the circumstances. Considering the purpose of the

financing and lack of alternatives, the Debtors concluded that the DIP Facilities represent the only financing available to them.

28. In light of the conditions imposed by the proposed DIP Facilities, including a sale of the Downstream Business, the Debtors, with the assistance of their advisors, analyzed the amount of cash necessary for the Debtors to (i) implement the Downstream Business Sale Process and alternative restructuring scenarios for the Upstream Business (as defined in the First Day Declaration) and (ii) to operate the Debtors' businesses in the ordinary course. To that end, the Debtors, in consultation with their advisors, provided the DIP Agents with a budget forecasting projected cash flows for the thirteen (13) week period following the Petition Date, which budget has been approved in form and substance by the DIP Agents (as such budget may be subsequently amended, modified, and updated from time to time in accordance with the DIP Loan Agreements, the "Approved Budget").⁹ The Debtors believe that the Approved Budget will allow the Debtors to operate in the ordinary course.

29. As reflected in the Approved Budget, the Debtors have an immediate need to access the full amount available under the ABL DIP Facility (minus the amount of Pre-Petition ABL Debt at such time outstanding and subject to compliance with the Borrowing Base) and at least \$25 million under the Term DIP Facility during the period from the Petition Date through entry of the Final Order. Upon entry of the Final Order, the Debtors will need the balance of the Term DIP Facility, as well as access to the ABL DIP Facility, for the remainder of these Chapter 11 Cases. Without the financing available under each of the DIP Facilities as set forth above pending entry of the Final Order, the Debtors would not have sufficient cash on hand

⁹ Attached hereto as Exhibit E is a consolidated summary of the Approved Budget (the "Budget Summary"). For the avoidance of doubt, the Budget Summary is attached for informational purposes and is only a summary of the more detailed Budget described herein.

to administer the Chapter 11 Cases, pay their employees, satisfy essential postpetition obligations as they come due, promptly pursue the Downstream Business Sale Process, preserve the value of their assets and satisfy the proposed adequate protection payments to the Pre-Petition Credit Parties. Accordingly, access to funds on an interim basis is necessary to avoid immediate and irreparable harm to the Debtors' estates.

Basis for Relief

I. The Debtors Should Be Authorized to Obtain the DIP Financing Under Section 364 of the Bankruptcy Code

30. The Debtors satisfy the requirements for relief under section 364 of the Bankruptcy Code, which permits a debtor to obtain postpetition financing and, in return, to grant superpriority administrative claim status and liens on their property. Section 364 of the Bankruptcy Code "provides bankruptcy courts with the power to authorize postpetition financing for a Chapter 11 debtor-in-possession." *In re Defender Drug Stores, Inc.*, 126 B.R. 76, 81 (Bankr. D. Ariz. 1991). "Having recognized the natural reluctance of lenders to extend credit to a company in bankruptcy, Congress designed [section] 364 to provide 'incentives to the creditor to extend postpetition credit.'" *Id.* In particular, section 364(c) of the Bankruptcy Code establishes the conditions under which a debtor may obtain certain types of secured credit and provides, in pertinent part, as follows:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien[.]

11 U.S.C. § 364(c). Further, section 364(d) of the Bankruptcy Code provides:

(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d).

31. As long as a debtor's business judgment does not run afoul of the letter and spirit of the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of

postpetition financing requires, inter alia, an exercise of “sound and reasonable business judgment”).

32. Further, in determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Financing Documents, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

33. Here, given all the facts and circumstances present in these cases, the Debtors have amply satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Financing. The Debtors exercised proper business judgment in securing the DIP Financing on terms that are fair and reasonable and the best available to them under the circumstances. Given the circumstances, the Debtors could not obtain credit on an unsecured or administrative expense basis, and the Debtors have provided the Pre-Petition Credit Parties with adequate protection against any potential diminution in value of their interests. Moreover, the requisite Pre-Petition Credit Parties have agreed in principle to the

use of Cash Collateral to the extent it constitutes their respective priority collateral under the terms of the Intercreditor Agreement. For all the reasons discussed further below, therefore, the Court should grant the Debtors' request to enter into the DIP Financing pursuant to sections 364(c) and (d) of the Bankruptcy Code.

A. The Debtors Exercised Sound and Reasonable
Business Judgment in Deciding to Enter into the DIP Facilities

34. Based on the circumstances of these Chapter 11 Cases, the DIP Financing represents a proper exercise of the Debtors' business judgment. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including decisions about whether and how to borrow money. *Grp. of Institutional Investors v. Chi., Milwaukee, St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943); *In re Farmland Indus., Inc.*, 294 B.R. at 882 ("Business judgments should be left to the board room and not to this Court.") (quoting *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985)); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983). "More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

35. In general, a bankruptcy court defers to a debtor's business judgment regarding the need for, and the proposed use of, funds, unless the debtor's decision improperly leverages the bankruptcy process or its purpose is not so much to benefit the estate as it is to benefit a party in interest. *See Ames Dep't Stores*, 115 B.R. at 40; *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981).

36. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied "as long as the proposed action *appears* to enhance the debtor's

estate.”” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)); *see also In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the business judgment rule, “management of a corporation’s affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. at 881 (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985) and *In re Defender Drug Stores, Inc.*, 145 B.R. at 317; *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (“[w]here the [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor’s estate”” (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985))).

37. Here, the Debtors have exercised sound business judgment in determining that the DIP Financing is appropriate. The Debtors’ effort to secure DIP Financing was guided by the Debtors’ current financial and operational needs. First, without access to the DIP Financing and Cash Collateral, the Debtors would not be able to pay expenses necessary to sustain ongoing operations, which would irreparably impair the value of the estate. Second, the DIP Facilities are the only available sources of funding with which to make such payments.

Third, the terms of the DIP Facilities were extensively negotiated at arm's length and in good faith by the Debtors and their advisors to ensure that they contained the most favorable terms possible given the relative bargaining power of the Debtors and their lenders.

38. For all of these reasons, the Debtors determined that entry into the DIP Facilities is in the best interests of the Debtors, their estates and creditors. The DIP Facilities will provide the Debtors with access to the liquidity needed to preserve the value of their assets through ongoing operations and ultimately, achieve a successful outcome through either a sale of the Debtors' assets, a restructuring or otherwise. Accordingly, the Debtors' decision to enter into the proposed DIP Facilities is an exercise of their sound judgment that warrants approval by the Court.

B. The Debtors Meet the Conditions Necessary Under Section 364(c) to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis

39. Section 364(c) of the Bankruptcy Code authorizes a debtor to obtain postpetition financing on a secured or superpriority basis, or both, where the Court finds, after notice and a hearing, that the debtors are "unable to obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code]" 11 U.S.C. § 364(c).

40. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (i) the debtor is unable to obtain unsecured credit under section 364(b), *i.e.*, by allowing a lender only an administrative claim;
- (ii) the credit transaction is necessary to preserve the assets of the estate; and
- (iii) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

See, e.g., In re Aqua Assocs., 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying the above factors and holding that “[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor’s estate and that the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere”).

(i) *The Debtors Are Unable to Obtain Financing
On More Favorable Terms Than the DIP Facilities*

41. The Debtors, advised by PJT Partners, a leading restructuring advisory firm, have diligently assessed their financing options and concluded that they cannot obtain financing on terms more favorable than the DIP Facilities. A debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.”); *accord In re Ames Dep’t Stores, Inc.*, 115 B.R. at 37 (debtor must show that it has made reasonable efforts to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code); *In re Crouse Grp., Inc.*, 71 B.R. at 549 (secured credit under section 364(c)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). This is true especially when time is of the essence. *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987). When few lenders are likely able and willing to

extend the necessary credit, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received); *see also In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

42. As set forth in the Baird Declaration and described above, the Debtors conducted marketing efforts and carefully reviewed their financing alternatives with respect to both revolving and term loan facilities. However, given the challenging state of the aluminum pricing markets and the Debtors’ highly-leveraged balance sheet and lack of unencumbered assets, no party was willing to entertain the possibility of providing such financing on an unsecured basis, or secured by junior liens on Pre-Petition Collateral. *See Baird Decl.* ¶ 19. On the contrary, the Debtors’ negotiations made clear that the Debtors could only obtain the financing necessary to preserve their estates if they extended superpriority, first lien status to new financing, which would have required the Debtors to engage in a costly priming fight with the Pre-Petition Term Credit Parties, with highly uncertain results. *See Baird Decl.* ¶ 22.

43. Notwithstanding the Debtors’ lack of alternative financing options, the DIP Facilities are the product of extensive good faith negotiations between the Debtors, the DIP Lenders, the DIP Agents, the Pre-Petition ABL Credit Parties, the Pre-Petition Term Lender Group and the Pre-Petition Term Agent, each of whom was represented by experienced counsel

and financial advisors. Through these negotiations, the Debtors were able to secure the most favorable terms possible under the circumstances. Simply put, the DIP Facilities provide the Debtors with the liquidity they need at the lowest cost available. Based on the negotiation history of the DIP Facilities, and the marketing efforts undertaken by the Debtors and PJT Partners, the DIP Facilities represent the Debtors' best available postpetition financing option.

(ii) *The DIP Facilities are Necessary to Preserve Assets of the Estates*

44. It is essential that the Debtors obtain the proposed financing to continue the orderly operation of their businesses, facilitate the Downstream Business Sale Process and otherwise support the Debtors' restructuring activities. As discussed above, absent the requisite financing provided by the DIP Facilities, the Debtors will need to wind down their operations, resulting in irreparable harm to their businesses, going concern value and ability to pursue the proposed Downstream Business Sale Process on an orderly basis. Accordingly, the circumstances of these Chapter 11 Cases necessitate postpetition financing under section 364(c) of the Bankruptcy Code.

(iii) *Terms of the DIP Facilities are Fair, Reasonable, and Appropriate under the Circumstances.*

45. In considering whether the terms of post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record* at 740:4-6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr S.D.N.Y. Feb. 27, 2009) ("[B]y reason of present market conditions, as

disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of prepetition secured debt] reasonable here and now.”).

46. Here, the terms of the DIP Facilities are fair, appropriate, reasonable and in the best interests of the Debtors, their estates and their creditors. In addition, the ABL DIP Facility provides incremental availability of up to \$20 million after the payment in full of the Pre-Petition ABL Debt, subject to compliance with the Borrowing Base, as compared to the amount the borrowing base would support under the Pre-Petition ABL Facility as of the Petition Date. As set forth in the Baird Declaration, the covenants and restrictions included in the ABL DIP Facility are reasonable and are not designed to make the Debtors disproportionately susceptible to a breach of such terms.

47. The terms of the Term DIP Facility are also fair and reasonable under the circumstances. While the pricing, fees and interest rates are slightly less favorable as compared to similarly sized facilities in comparable cases, given the circumstances, no more favorably priced DIP financing was available. *See* Baird Decl. ¶ 26. As is customary, the Term DIP Facility contains certain case controls (*e.g.*, milestones) and other bankruptcy-related terms, but the Debtors believe that these terms provide sufficient flexibility for the Debtors to pursue likely alternatives to maximize the value of their assets.

48. Finally, without the financing provided by the DIP Facilities, the Debtors would not be able to realize the full value of their assets either through a sale or other restructuring alternative, to the detriment of all stakeholders. Accordingly, the terms of the DIP Facilities are fair, reasonable and appropriate.

C. The Debtors Should Be Authorized to Obtain DIP Financing Secured by Liens that are Senior to the Liens Securing the Pre-Petition Loan Agreements

49. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, a court may also authorize a debtor to obtain postpetition credit secured by a lien that is senior in priority to existing liens on encumbered property if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected or consent is obtained. *See* 11 U.S.C. § 364(d)(1).

50. When determining whether to authorize a debtor to obtain credit secured by a lien that is senior or equal to a Pre-Petition lien under section 364(d), courts consider a number of factors, including, without limitation:

- whether alternative financing is available on any other basis (i.e., whether any better offers, bids or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtor's businesses;
- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtor and proposed lender(s); and
- whether the proposed financing agreement was negotiated in good faith and at arm's length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors.

See, e.g., Ames Dep't Stores, 115 B.R. at 37-39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862-79; *Barbara K. Enters.*, 2008 WL 2439649, at *10; *see also* 3 COLLIER ON BANKRUPTCY ¶ 364.04[1] (16th ed.).

51. The DIP Financing satisfies each of these factors. First, as described above, the Debtors and their advisors undertook a focused process appropriate to the circumstances and explored financing proposals with various participants both in and outside the capital structure of the Debtors. As the Debtors' business prospects worsened, the increased size of necessary financing led the Debtors and their advisors to conclude that viable financing would

need to come from the Pre-Petition Credit Parties. *See* Baird Decl. ¶ 16. The Debtors conducted arm's length negotiations with the DIP Lenders, and the ultimate forms of agreement reflect the most favorable terms the Debtors were able to obtain. The Debtors are not able to obtain financing on equal or better terms from the DIP Lenders, or any other source, without granting liens senior in priority to those securing the Pre-Petition Credit Parties as described herein, and the Pre-Petition Credit Parties were unwilling to consent to any such priming except in connection with the DIP Financing. *See* Baird Decl. ¶¶ 19–20.

52. Second, as discussed above, the Debtors need the funds to be provided under the DIP Financing to preserve the value of their estates for the benefit of creditors and other parties in interest, facilitate the Downstream Business Sale Process and otherwise support the Debtors' restructuring activities.

53. Third, as discussed above, the terms of the DIP Financing are reasonable and adequate to support the Debtors' operations and restructuring and sale activities through the pendency of these Chapter 11 Cases.

54. Fourth, as described in greater detail above and in the Baird Declaration, the Debtors and the DIP Lenders negotiated the DIP Financing Documents in good faith and at arm's length, and the Debtors' entry into the DIP Financing Documents is an exercise of their sound business judgment. The DIP Financing represents the most favorable terms available to the Debtors under current market conditions and in light of the Debtors' financial condition. Taking into account all of these factors, therefore, it is clear that the Debtors should be authorized to secure the DIP Financing with first priority senior priming liens.

D. The Interests of the Pre-Petition Credit Parties Are Adequately Protected

55. A debtor may obtain postpetition credit “secured by a senior or equal lien on property of the estate that is subject to a lien only if” the debtor, among other things, provides “adequate protection” to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest or granting of replacement liens or administrative claims. *See, e.g., In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985) (“[S]uch matters ‘are [to be] left to case-by-case interpretation and development.’”) (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 339, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6295); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case”); *In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted). The critical purpose of adequate protection is to guard against the diminution of a secured creditor’s collateral during the period when such collateral is being used by the debtor in possession. *See Martin*, 761 F.2d at 474; *In re Johnson*, 90 B.R. 973, 978 (Bankr. D. Minn. 1988) (holding that secured creditor is not impaired and is not entitled to receive adequate protection payments where value of collateral does not decline); 495 *Cent. Park*, 136 B.R. at 631 (“The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization.”); *In re Beker Indus. Corp.*, 58 B.R. at 736; *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996).

56. Courts in this district and others have approved similar forms of adequate protection to that being provided to the Pre-Petition Credit Parties. *See, e.g., In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 15, 2016) (approving grant of replacement liens as adequate protection for the use of cash collateral on an interim basis); *In re Bakers Footwear Grp., Inc.*, No. 12-49658-705 (CER) (Bankr. E.D. Mo. Nov. 5, 2012); *In re Duke and King Acquisition Corp.*, No. 10-38652 (GFK) (Bankr. D. Minn. Jan. 24, 2011) (authorizing replacement liens to prepetition secured creditors for the use of cash collateral); *In re Otter Tail AG Enters., LLC*, 2009 Bankr. LEXIS 5352, at *10-11 (Bankr. D. Minn. Nov. 20, 2009) (granting, *inter alia*, adequate protection liens for the use of cash collateral); *In re Schwing America, Inc.*, No. 09-36760 (NCD) (Bankr. D. Minn. Oct. 23, 2009) (granting replacement liens in authorizing postpetition financing on an interim basis); *In re Polaroid Corp.*, No. 08-46617 (GFK) (Bankr. D. Minn. Jan. 27, 2009) (authorizing replacement liens to prepetition secured creditors for the use of cash collateral); *In re Premium Protein Prods., LLC*, 2009 Bankr. LEXIS 5285, at *26-27 (Bankr. D. Neb. Jan. 25, 2010) (granting adequate protection liens and superpriority claims pursuant to section 507(b) to prepetition lenders); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 18, 2012) (granting, *inter alia*, first and second lien adequate protection liens); *In re Patriot Coal Corp.*, No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 3, 2012) (granting, *inter alia*, DIP Liens, adequate protection liens and superpriority claims to secure DIP obligations); *In re NewPage Corp.*, No. 11-12804 (KG) (Bankr. D. Del. Oct. 5, 2011).

57. The Pre-Petition Credit Parties will be granted adequate protection through the provision of replacement liens, administrative claims, current cash payment of all reasonable fees and expenses and monthly cash payments in an amount equal to interest on the

debt under the Pre-Petition Loan Agreements at the non-default contract rate. The Pre-Petition ABL Agent, acting on behalf of the Pre-Petition ABL Lenders, and the Pre-Petition Term Agent, acting on behalf of the Pre-Petition Term Lenders, are expected to consent at the Interim Hearing to the adequate protection proposed to be granted under the DIP Orders. In addition, the adequate protection liens proposed to be granted are consistent with the priorities set forth in the Intercreditor Agreement. Accordingly, the Court should find that the adequate protection provided to the Pre-Petition Credit Parties is fair and reasonable, and satisfies the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

E. The ABL DIP Facility's Adequate Protection Roll-Up Feature is Appropriate

58. By this Motion, the Debtors also seek authority to use certain proceeds and collections of the ABL Priority Collateral to repay obligations outstanding under the Pre-Petition ABL Loan Agreement as of the Petition Date until such obligations are paid in full (the "Adequate Protection Roll-Up").

59. After careful consideration of the terms of the DIP Facility, the Debtors determined that the Adequate Protection Roll-Up provisions were appropriate and necessary under the circumstances. This feature was a critical component of the willingness of the ABL DIP Lenders to commit to provide funding under the ABL DIP Facility and consent to the use of Cash Collateral constituting Pre-Petition ABL Priority Collateral. Indeed, the ABL DIP Lenders would not have agreed to provide the ABL DIP Facility without the Adequate Protection Roll-Up. The Adequate Protection Roll-Up also eliminates the unnecessary complications associated with tracking cash proceeds from prepetition and postpetition accounts receivables and inventory that would otherwise be required pursuant to the Pre-Petition ABL Loan Agreement and the ABL DIP Loan Agreement. Moreover, the financing contemplated under the ABL DIP Loan Agreement will offer the Debtors incremental availability in excess of the amount the borrowing

base would support as of the Petition Date, subject to compliance with the requirements set forth in the ABL DIP Loan Agreement, to continue to fund their businesses during the Chapter 11 Cases. In addition, unless the Pre-Petition ABL Credit Parties consent to the use of Cash Collateral constituting ABL Priority Collateral, the proceeds and collections of the ABL Priority Collateral subject to the Adequate Protection Roll-Up would otherwise be paid to the Pre-Petition ABL Credit Parties pursuant to the Pre-Petition ABL Loan Agreement. Finally, the Pre-Petition Term Lender Group and the Term DIP Lenders have consented to these provisions. Therefore, the Debtors believe that the Adequate Protection Roll-Up is a necessary component to the ABL DIP Facility and will ensure the Debtors' access to sufficient liquidity for working capital and general corporate purposes to fund day-to-day operations during these Chapter 11 Cases.

60. Roll-ups are a common feature of debtor-in-possession financings, and have been approved in a variety of cases. *See In re Laboratory Partners, Inc.*, No. 13-12769 (Bankr. D. Del. Nov. 26, 2013) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Southern Air Holdings, Inc.*, No. 12-12690 (Bankr. D. Del. Oct. 1, 2012) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Appleseed's Intermediate Holdings LLC, et al.*, No. 11-10160 (Bankr. D. Del. Jan. 20, 2011) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Hayes Lemmerz Int'l, Inc.*, No. 09-11655 (Bankr. D. Del. May 14, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Source Interlink Cos. Inc.*, No. 09-11424 (Bankr. D. Del. Apr. 29, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Dayton Superior Corp.*, No. 09-10785 (Bankr. D. Del. Mar. 10, 2009) (authorizing debtor-in-possession financing that

included roll-up under the interim order); *In re Aleris Int'l, Inc.*, No. 09-10478 (Bankr. D. Del. Feb. 13, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Pacific Energy Res., Ltd.*, No. 09-10785 (Bankr. D. Del. Mar. 10, 2009) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Foamex Int'l Inc.*, No. 09-10560 (Bankr. D. Del. Feb. 20, 2009) (authorizing debtor-in-possession financing that included full roll-up under the interim order); *In re Hilex Poly Co. LLC*, No. 08-10890 (Bankr. D. Del. May 7, 2008) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Holley Performance Prods. Inc.*, No. 08-10256 (Bankr. D. Del. Feb. 12, 2008) (authorizing debtor-in-possession financing that included roll-up under the interim order).

II. The Debtors Should Be Authorized to Use the Cash Collateral

61. Section 363(c) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—

- (A) each entity that has an interest in such cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Further, section 363(e) provides that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

62. The Debtors have satisfied the requirements of sections 363(c)(2) and (e), and should be authorized to use the Cash Collateral. First, as explained above, the requisite Pre-Petition Credit Parties are expected to consent at the Interim Hearing to the use of their Cash

Collateral or will be deemed to have consented in accordance with the terms of the Intercreditor Agreement. Second, as described above, the Debtors are providing the Pre-Petition Credit Parties with replacement liens on postpetition collateral of the Pre-Petition Credit Parties, including Cash Collateral, in accordance with and subject to the Intercreditor Arrangements, superpriority administrative claims, current cash payment of reasonable fees and expenses and monthly cash payments in an amount equal to interest on the debt under the Pre-Petition Loan Agreements at the non-default contract rate.

63. Furthermore, as described above, the Debtors have an urgent need for the immediate use of the Pre-Petition Collateral, including the Cash Collateral, to honor obligations critical to the success of their ongoing operations, including to employees, vendors, and customers. Absent access to Cash Collateral, the Debtors' business will quickly become unstable, with damaging consequences for the Debtors and their estates and creditors, including the Pre-Petition Credit Parties.

64. Therefore, the Debtors submit that they should be authorized to use the Cash Collateral on the terms set forth in the Interim Order.

III. The Debtors Should Be Authorized to Pay the Fees in Connection with the DIP Financing

65. As described above, the Debtors have agreed, subject to Court approval and the effectiveness of the DIP Loan Agreements, to pay certain fees to the DIP Agents and the DIP Lenders in connection with the DIP Financing. The fees payable to the DIP Agents and the DIP Lenders and other obligations under the DIP Loan Agreements represent the most favorable terms on which the DIP Lenders would agree to make the DIP Financing available. *See Baird Decl.* ¶¶ 25–26. The Debtors considered these fees when determining in the exercise of their sound business judgment that the DIP Financing Documents constituted the best terms on which

the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute these Chapter 11 Cases. Consequently, paying these fees in order to obtain the DIP Financing is in the best interests of the Debtors' estates and creditors and other parties in interest.

IV. The Scope of the Carve-Out Is Appropriate

66. The DIP Financing subjects the security interests and administrative expense claims of the DIP Lenders to the Carve-Out. Such carve-outs for professional fees under the terms of the debtor's postpetition financing have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from their professionals in certain circumstances, including during an event of default. *See Ames*, 115 B.R. at 40. Additionally, the Carve-Out protects against administrative insolvency during the course of these Cases by ensuring that assets remain for payment of the U.S. Trustee's fees and professional fees of the Debtors and the Committee notwithstanding the grant of superpriority claims and DIP and adequate protection liens.

67. Courts in this district and others routinely approve carve-outs agreed to by the debtors and their DIP financing lenders, and the Debtors request that the proposed Carve-Out in these Chapter 11 Cases be approved. *See, e.g., In re Arch Coal, Inc.*, No. 16-40120 (Bankr. E.D. Mo. Jan. 15, 2016); *In re US Fidelis, Inc.*, 2010 Bankr. LEXIS 5837, at *18 (Bankr. E.D. Mo. May 28, 2010); *In re Genmar Holdings, Inc.*, No. 09-43537 (DDO) (Bankr. D. Minn. June 4, 2009); *In re Trilogy Dev. Co.*, 2009 Bankr. LEXIS 5178, at *18-19 (Bankr. W.D. Mo. July 14, 2009); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 18, 2012); *In re The Great Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011).

V. The DIP Lenders Should Be Deemed Good Faith Lenders Under Section 364(e)

68. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its rights in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

69. As explained in detail herein and in the Baird Declaration, the DIP Facilities offer the most favorable terms on which to obtain needed postpetition financing and are the result of arm's length, good faith negotiations between the Debtors and the DIP Lenders. *See* Baird Decl. ¶¶ 24–26. The terms and conditions of the DIP Financing Documents are fair and reasonable, and the proceeds of the DIP Financing will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Financing Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are “good faith” lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

VI. The Section 506(c) and “Equities of the Case” Waivers are Appropriate.

70. In connection with consenting to priming liens or the use of cash collateral, prepetition secured parties commonly request a waiver of (i) section 506(c) of the Bankruptcy Code, which permits the Debtors to surcharge collateral and (ii) the “equities of the

case” exception from the general rule of section 552 of the Bankruptcy Code that prepetition liens that attach to proceeds of collateral will continue to attach to postpetition proceeds. Here, subject to the terms of the Interim Order, the requisite Pre-Petition Credit Parties are consenting (or are expected to consent at the Interim Hearing) to have their liens primed by the DIP Financing as well as to the Debtors’ continued use of Cash Collateral, thereby providing the Debtors with sufficient funds with which to continue their business operations. Absent such consent, the Debtors would be forced to seek non-consensual use of Cash Collateral and priming of the Pre-Petition Credit Parties’ liens, which would require costly litigation, the outcome of which would be highly uncertain, with devastating consequences if the Debtors did not prevail. As a condition to providing consent, the requisite Pre-Petition Credit Parties require the Debtors to waive their rights under section 506(c) and the “equities of the case” exception under Bankruptcy Code section 552(b), subject to and effective upon entry of the Final Order. In addition, as the section 506(c) and “equities of the case” waivers would only be approved pursuant to the Final Order, parties in interest (including any Committee that may be appointed) will have an opportunity to be heard in connection with the approval of such waiver. Accordingly, the Debtors submit that the proposed section 506(c) and “equities of the case” waivers are appropriate.

**VII. Modification of the Automatic Stay is
Warranted for the DIP Lenders and DIP Agents**

71. The DIP Financing Documents contemplate that the automatic stay arising under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Agents to exercise, upon the occurrence and during the continuation of any Event of Default, but subject to any applicable motion requirements in the DIP Orders, all rights and

remedies provided for in the DIP Financing Documents, without further order of or application to the Court.

72. Stay modification provisions of this sort are ordinary features of debtor-in-possession financing and, in the Debtors' business judgment, are reasonable under the circumstances. *See, e.g., In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 15, 2016); *In re Bakers Footwear Grp., Inc.*, No. 12-49658-705 (CER) (Bankr. E.D. Mo. Nov. 5, 2012); *In re Premium Protein Prods., LLC*, 2009 Bankr. LEXIS 5285, at *31–32 (Bankr. D. Neb. Jan. 25, 2010); *In re Trilogy Dev. Co.*, 2009 Bankr. LEXIS 5178, at *19 (Bankr. W.D. Mo. July 14, 2009); *In re Alpha Nat'l Res., Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 17, 2015); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. June 4, 2015); *In re James River Coal Co.*, No. 14-31848 (KRH) (Bankr. E.D. Va. May 9, 2014); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 18, 2012); *In re Patriot Coal Corp.*, No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 3, 2012); *In re Eastman Kodak Co.*, No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 16, 2012); *In re Roomstore, Inc.*, No. 11-37790 (KLP) (Bankr. E.D. Va. Jan. 5, 2012); *In re The Great Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011); *In re Circuit City Stores, Inc.*, No. 08-35653 (KRH) (Bankr. E.D. Va. Dec. 23, 2008).

VIII. The Debtors Require Immediate Approval of the DIP Financing

73. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2), (c)(2).

74. The Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein is not granted promptly after the Petition Date. The Pre-Petition Lenders, the sole viable source of financing for the Debtors, have required that the DIP Financing be approved as a condition to allowing the use of their Cash Collateral. *See Baird Decl.* ¶ 19. As described above, the Debtors must have immediate access to cash to pay salaries, vendors, and other day-to-day expenditures, all as set forth in the first-day motions filed concurrently with this Motion. Given the immediate and irreparable harm to the Debtors, their estates, and their creditors absent interim relief, the Debtors request that, pending the Final Hearing, the Court schedule an interim hearing within two business days of the Petition Date or as soon thereafter as practicable to consider the interim relief requested in the Motion. Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtors' estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2).

Waiver of Stay Under Bankruptcy Rule 6004(h)

75. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

76. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to the agent under the Debtors' Pre-Petition ABL Loan Agreement; (iii) counsel to the agent under the Debtors' Pre-Petition Term Loan Agreement; (iv) counsel to the ABL DIP Agent; (v) counsel to the Term DIP Agent; (vi) counsel to the Term DIP Credit Parties; (vii) the indenture trustee for the Debtors' senior unsecured notes; (viii) the Internal Revenue Service; (ix) the Securities and Exchange Commission; (x) the United States Department of Labor; (xi) the United States Attorney's Office for the Eastern District of Missouri; and (xii) the holders of the thirty (30) largest unsecured claims against the Debtors, on a consolidated basis (collectively, the "Notice Parties"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Interim Order, substantially in the form attached hereto as Exhibit A, (ii) following the Final Hearing, enter the Final Order and (iii) grant the Debtors such other and further relief as may be just or proper.

Dated: February 8, 2016
St. Louis, Missouri

Respectfully submitted,
CARMODY MACDONALD P.C.

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Proposed Counsel to the Debtors and
Debtors in Possession

Exhibit A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

NORANDA ALUMINUM, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 16-____(____)

(Jointly Administered)

Re: Docket Nos. [____]

**INTERIM ORDER GRANTING DEBTORS' MOTION TO
(I) AUTHORIZE DEBTORS IN POSSESSION TO OBTAIN POST-PETITION
FINANCING PURSUANT TO 11 U.S.C. §§ 105, 362, 363, AND 364; (II) GRANT
LIENS AND SUPERPRIORITY CLAIMS TO POST-PETITION LENDERS
PURSUANT TO 11 U.S.C. §§ 364 AND 507; (III) PROVIDE ADEQUATE
PROTECTION TO PRE-PETITION CREDIT PARTIES; (IV) MODIFY
AUTOMATIC STAY PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364, AND 507;
(V) SCHEDULE FINAL HEARING PURSUANT TO BANKRUPTCY RULES
4001(B) AND (C) AND LOCAL RULE 4001-2; AND (VI) GRANT RELATED RELIEF**

This matter is before the Court on the Motion (the "Motion") of Noranda Aluminum Inc., a Delaware corporation, on behalf of itself and its affiliated debtors and debtors in possession (collectively, the "Debtors") in these Chapter 11 cases (the "Chapter 11 Cases"), requesting entry of an interim order (this "Interim Order") and final order (a "Final Order") pursuant to Sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and the local rules for the Eastern District of Missouri (the "Local Rules");

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: Noranda Aluminum, Inc. (Del; 5285), Gramercy Alumina Holdings Inc. (Del; 1941), Gramercy Alumina Holdings II, Inc. (Del.; 2806), NHB Capital, LLC (Del; 0777), Noranda Alumina LLC (Del; 4769), Noranda Aluminum Acquisition Corp. (Del; 8458), Noranda Aluminum Holding Corp. (Del; 8550), Noranda Bauxite Ltd. (Jamaica), Noranda Bauxite Holdings Ltd. (St. Lucia), Noranda Intermediate Holding Corp. (Del; 3238) and Norandal USA, Inc. (Del; 6477). The address of the Debtors' corporate headquarters is 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067.

(1) authorizing the Debtors to obtain post-petition financing, consisting of (x) a superpriority, secured, asset-based revolving credit facility in the principal amount of up to \$130,000,000 (the “ABL DIP Facility”) from Bank of America, N.A. (“BofA”), in its separate capacities as administrative and collateral agent (in such capacities, together with its successors in such capacities, the “ABL DIP Agent”) and as a lender, and certain other financial institutions (together with BofA and their respective successors and assigns, “ABL DIP Lenders”; and together with ABL DIP Agent, the “ABL DIP Credit Parties”), and (y) a superpriority, multiple-draw secured term loan facility in an aggregate principal amount of up to \$35,000,000, in the form of Initial Term Loans and Delayed Draw Term Loans, in each case as defined and specifically provided for in the Term DIP Loan Agreement (the “Term DIP Facility,” and together with the ABL DIP Facility, the “DIP Financing”) from Cortland Capital Market Services, LLC (“Cortland”), in its separate capacities as administrative and collateral agent (in such capacities, together with its successors in such capacity, the “Term DIP Agent”; and together with the ABL DIP Agent, the “DIP Agents”), and certain lenders (with their respective successors and assigns, the “Term DIP Lenders”; together with the Term DIP Agent, the “Term DIP Credit Parties”);

(2) authorizing (x) the domestic Debtors to execute and enter into the ABL DIP Financing Documents (as defined below) and (y) the Debtors (including Noranda Bauxite Ltd. but solely as a direct borrower of certain Term DIP Loans (“NBL” or the “Jamaican Borrower”)) to execute and enter into the Term DIP Financing Documents (as defined below) and to perform all such other and further acts as may be required in connection with the DIP Financing Documents²;

² Wherever in this Order the term “Debtors” is used (i) with reference to their requesting or receiving ABL DIP Credit Extensions, using ABL Priority Collateral, being liable for or repaying ABL DIP Obligations, or granting

(3) authorizing the Debtors to use proceeds of the DIP Financing as permitted in the DIP Financing Documents and in accordance with this Interim Order;

(4) granting automatically perfected (i) priming security interests in and liens on all of the DIP Collateral (as defined below) and (ii) non-priming security interests in and liens on Unencumbered Property (as defined below) in which there is either pre-existing permitted senior liens or no pre-existing liens, to the DIP Agents for the respective benefit of the ABL DIP Credit Parties and Term DIP Credit Parties (collectively, the “DIP Credit Parties”) to the extent provided herein, and granting superpriority administrative expense status to the DIP Obligations (as defined below), in each case subject to the Carve-Out (as defined below) and on the terms and subject to the relative priorities set forth in the DIP Financing Documents;

(5) providing adequate protection to the Pre-Petition Credit Parties (as defined below) to the extent of any diminution in value of their interests in the Pre-Petition Collateral (as defined below) and subject to the Carve-Out (as defined below);

(6) authorizing the Debtors to pay the principal, interest, fees, expenses, disbursements, and other amounts payable under the DIP Financing Documents as such amounts become due and payable;

(7) authorizing the Debtors to use Cash Collateral (as defined below) and all other Pre-Petition Collateral (as defined below), subject to the terms of this Interim Order and the Intercreditor Agreement (as defined below);

DIP Liens or Superpriority Claims, such reference shall be understood to mean only the domestic Debtors; or (ii) with reference to the liability of Debtors for the Term DIP Obligations, such reference shall be understood to exclude Noranda Bauxite Holdings Ltd. and to limit the liability of NBL to amounts directly borrowed by NBL under the Term DIP Facility, and any reference to liens or Superpriority Claims conferred upon Term DIP Credit Parties by NBL shall be understood to mean liens or Superpriority Claims only to the extent of the Term DIP Loans made to NBL. Each of the capitalized terms used in this footnote shall have the meanings ascribed to them later in the text of this Interim Order.

(8) authorizing the use of Cash Collateral in the form of collections and proceeds of accounts receivable and other rights to payment (less the amount of \$10,000,000, which may be retained by the Debtors to pay expenses of operation following commencement of the Chapter 11 Cases) to repay the Pre-Petition ABL Debt (as defined below) until Full Payment (as defined below) of the Pre-Petition ABL Debt;

(9) vacating and modifying the automatic stay pursuant to Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the other DIP Financing Documents;

(10) subject only to and effective upon entry of the Final Order, waiving the Debtors' ability to surcharge against any DIP Collateral (as defined below) pursuant to Section 506(c) of the Bankruptcy Code and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(11) scheduling a final hearing (the "Final Hearing") to consider entry of the Final Order, and in connection therewith, giving and prescribing the manner of notice of the Final Hearing on the Motion;

(12) a waiver of any applicable stay with respect to the effectiveness and enforceability of the Interim Order (including under Bankruptcy Rule 6004); and

(13) granting the Debtors such other and further relief as is just and proper.

Based upon the Court's review of the Motion, the exhibits attached thereto, the *Declaration of Dale W. Boyles in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") and the *Declaration of James H. Baird in Support of Debtors' Motion for Entry of Interim and Final Orders to (i) Authorize Debtors in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, 364; (ii) Grant Liens and*

Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507, (iii) Provide Adequate Protection to Pre-Petition Credit Parties, (iv) Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507, (v) Schedule Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c), and Local Rule 4001-2, and (iv) Grant Related Relief (the “Baird Declaration”); and all matters brought to the Court’s attention at the interim hearing, which was held on February 9, 2016, pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) (the “Interim Hearing”), and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND DETERMINES.³

A. Petition Date. On February 8, 2016 (the “Petition Date”), each of the Debtors filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code, and each is continuing to manage its properties and to operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed for any Debtor.

B. Debtors’ Stipulations. Without prejudice to the rights of any other party (but subject to the limitations thereon contained in Paragraph 22 below), each Debtor admits, stipulates, acknowledges and agrees as follows:

(i) Pre-Petition ABL Loan Documents. Pursuant to that certain ABL Credit Agreement dated as of February 29, 2012 (as at any time amended or supplemented, the “Pre-Petition ABL Loan Agreement”), certain financial institutions in their capacity as lenders (collectively, “Pre-Petition ABL Lenders”) and BofA in its capacity as administrative and collateral agent for the Pre-Petition ABL Lenders (in such capacity, the “Pre-Petition ABL

³ To the extent any findings of fact constitute conclusions of law, they are adopted as such, and vice versa.

Agent,” and together with the Pre-Petition ABL Lenders, the “Pre-Petition ABL Credit Parties”) established a revolving credit facility and issued letters of credit for the domestic Debtors (other than NHB Capital, LLC) (collectively, whether in the capacity as borrower or guarantor, the “Pre-Petition Obligors”), in an aggregate principal amount up to \$250,000,000. Pursuant to a Guarantee and Collateral Agreement dated February 29, 2012, the Debtors each unconditionally and absolutely guaranteed payment of all obligations owing by the borrowers under the Pre-Petition ABL Loan Agreement. The Pre-Petition ABL Loan Agreement, together with any other agreement, note, instrument, guaranty, mortgage, fixture filing, deed of trust, financing statement, pledge, assignment, and other document executed at any time in connection therewith, in each case as the same may be amended, modified, restated or supplemented from time to time, are hereinafter referred to collectively as the “Pre-Petition ABL Loan Documents.”

(ii) Pre-Petition ABL Collateral. Pursuant to certain Security Documents (as defined in the Pre-Petition ABL Loan Agreement) executed by the Pre-Petition Obligors in favor of the Pre-Petition ABL Agent, each Pre-Petition Obligor granted to the Pre-Petition ABL Agent, for the benefit of the Pre-Petition ABL Credit Parties and to secure such Pre-Petition Obligor’s obligations and indebtedness under the Pre-Petition ABL Loan Documents, (x) first priority liens on and security interests in the ABL Priority Collateral (as defined in that certain Intercreditor Agreement dated as of February 29, 2012, among the Pre-Petition Obligors, Pre-Petition ABL Agent, and Pre-Petition Term Agent (as at any time amended, the “Intercreditor Agreement”) of the Pre-Petition Obligors (the “ABL Priority Collateral”) and (y) second priority liens on and security interests in the Term Priority Collateral (as defined in the Intercreditor Agreement) of the Pre-Petition Obligors (the “Term Priority Collateral” and together with the ABL Priority Collateral, the “Pre-Petition Collateral,” and such liens and security interests, collectively, the

“ABL Security Interests”), in each case as provided in the Pre-Petition ABL Documents and the Intercreditor Agreement.

(iii) Pre-Petition Term Loan Documents. Pursuant to that certain Credit Agreement dated as of February 29, 2012 (as at any time heretofore amended, modified, restated or supplemented, the “Pre-Petition Term Loan Agreement”), certain financial institutions in their capacity as lenders under the Pre-Petition Term Loan Agreement (the “Pre-Petition Term Lenders”) and Cortland Capital Market Services LLC, in its separate capacities as administrative agent and collateral agent for the Pre-Petition Term Lenders (in such capacities, the “Pre-Petition Term Agent” together with the Pre-Petition ABL Agent, the “Pre-Petition Agents,” and the Pre-Petition Term Agent together with Pre-Petition Term Lenders, the “Pre-Petition Term Credit Parties”), made term loans to Noranda Aluminum Acquisition Corp., as borrower under the Pre-Petition Term Loan Agreement (the “Term Borrower”) in an original aggregate principal amount of up to approximately \$485,000,000.00. Pursuant to that certain Guarantee and Collateral Agreement dated as of February 29, 2012, the Pre-Petition Obligors each unconditionally and absolutely guaranteed payment of all obligations owing by the Term Borrower under the Pre-Petition Term Loan Agreement. The Pre-Petition Term Loan Agreement, together with any other agreement, note, instrument, guaranty, mortgage, fixture filing, deed of trust, financing statement, pledge, assignment, and other document executed at any time in connection therewith, in each case as the same may be amended, modified, restated or supplemented from time to time, are hereinafter referred to collectively as the “Pre-Petition Term Loan Documents” and collectively with the Prepetition ABL Loan Documents, the “Prepetition Documents.”

(iv) Pre-Petition Term Loan Collateral. Pursuant to certain Security Documents (as such term is defined in the Pre-Petition Term Loan Agreement) executed by the

Pre-Petition Obligors in favor of the Pre-Petition Term Agent, each Pre-Petition Obligor granted to the Pre-Petition Term Agent, for itself and the Pre-Petition Term Lenders for which it serves as agent, and to secure the Pre-Petition Obligors' obligations under the Pre-Petition Term Loan Documents, (x) second priority security interests in and continuing liens upon the ABL Priority Collateral and (y) first priority security interests in and continuing liens upon the Term Priority Collateral (collectively, the "Term Loan Security Interests") and together with the ABL Security Interests, the "Pre-Petition Security Interests"), in each case as permitted in the Pre-Petition Term Loan Documents and the Intercreditor Agreement.

(v) Intercreditor Agreement. Pursuant to the Intercreditor Agreement, the parties agreed, among other things, that (x) the security interests in and liens of the Pre-Petition ABL Agent upon the ABL Priority Collateral, whenever and however obtained, would be senior in all respects and prior to the security interests and liens of Pre-Petition Term Agent in such property and (y) the security interests and liens of Pre-Petition Term Agent upon the Term Priority Collateral, whenever and however obtained, would be senior in all respects and prior to the security interests and liens of Pre-Petition ABL Agent in such property.

(vi) Pre-Petition ABL Debt and Pre-Petition Term Debt. As of the Petition Date, the Pre-Petition Obligors were jointly and severally indebted and liable (x) under the Pre-Petition ABL Loan Documents to Pre-Petition ABL Credit Parties for revolving credit loans in the approximate principal amount of \$61,500,000 (the "Pre-Petition ABL Loans"), for fees, expenses, and other charges associated with depository accounts and other banking products and services, and on a contingent basis in the approximate amount of \$44,900,000 in face amount of standby letters of credit (the "Pre-Petition LCs"; together with the Pre-Petition ABL Loans, all other obligations of any Pre-Petition Obligor in respect of indemnities, guaranties and other

payment assurances given by any Pre-Petition Obligor for the benefit of Pre-Petition ABL Credit Parties, and all interest, fees, costs, legal expenses and all other amounts heretofore or hereafter accruing thereon or at any time chargeable to any Pre-Petition Obligor in connection therewith, collectively referred to as the “Pre-Petition ABL Debt”); and (y) under the Pre-Petition Term Loan Documents to the Pre-Petition Term Credit Parties for term loans in the approximate principal amount outstanding as of the Petition Date of \$468,098,674.21 (the “Pre-Petition Term Loans”; together with all other obligations of any Pre-Petition Obligor in respect of indemnities, guaranties and other payment assurances given by any Pre-Petition Obligor for the benefit of the Pre-Petition Term Credit Parties, and all interest, fees, costs, legal expenses and all other amounts heretofore or hereafter accruing thereon or at any time chargeable to any Pre-Petition Obligor in connection therewith, collectively referred to as the “Pre-Petition Term Debt”). Each Debtor acknowledges and stipulates that the Pre-Petition ABL Debt and the Pre-Petition Term Debt (collectively, the “Pre-Petition Debt”) are due and owing to the Pre-Petition ABL Credit Parties and Pre-Petition Term Credit Parties (collectively, the “Pre-Petition Credit Parties”), respectively, without any defense, offset, recoupment or counterclaim of any kind; the Pre-Petition Debt constitutes the legal, valid and binding obligations of each Pre-Petition Obligor, enforceable in accordance with their terms; and none of the Pre-Petition Debt or any payments made to any Pre-Petition Credit Party or applied to the obligations owing under any Pre-Petition ABL Loan Documents or Pre-Petition Term Loan Documents (collectively, the “Pre-Petition Loan Documents”) prior to the Petition Date is subject to avoidance, subordination, recharacterization, recovery, attack, offset, counterclaim, defense or Claim (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(vii) Cash Collateral. Subject to the Intercreditor Agreement, all or substantially all cash, securities or other property of the Pre-Petition Obligors (and the proceeds therefrom) as of the Petition Date, including, without limitation, all amounts on deposit or maintained by any Pre-Petition Obligor in any account with any Pre-Petition ABL Credit Party is subject to valid and enforceable rights of setoff and valid, perfected, enforceable first-priority and second-priority liens, as the case may be, under the Pre-Petition Loan Documents and applicable law, and is included in the Pre-Petition Collateral, and therefore the Pre-Petition Obligors' cash, cash balances, and cash accounts are cash collateral of the Pre-Petition Credit Parties within the meaning of Section 363(a) of the Bankruptcy Code. All such cash (including, without limitation, all proceeds of the Pre-Petition Collateral and together with all proceeds of property encumbered by liens and security interests granted under this Interim Order), is referred to herein as "Cash Collateral."

C. Need for Financing. An immediate and ongoing need exists for the Debtors to obtain the DIP Financing in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to pay payroll obligations, to satisfy other working capital and operational needs so as to maximize the value of their respective businesses and assets as debtors in possession under Chapter 11 of the Bankruptcy Code. The Debtors do not have sufficient available resources of working capital to operate their businesses in the ordinary course without post-petition financing. The Debtors' ability to maintain business relationships with vendors and customers, to pay employees, and otherwise to fund operations is essential to the Debtors' viability and preservation of the going concern value of their businesses.

D. Proposed DIP Facilities. The Debtors have requested the (i) the ABL DIP Lenders to establish the ABL DIP Facility pursuant to which the Debtors may obtain loans from time to time (the “ABL DIP Loans,” together with other extensions of credit pursuant to the ABL DIP Loan Agreement (as defined below), the “ABL DIP Credit Extensions”) and letters of credit in an aggregate amount not to exceed at any time the lesser of (x) \$130,000,000 minus the amount of the Pre-Petition ABL Debt at such time and (y) the Borrowing Base (as defined in the ABL DIP Loan Agreement), and (ii) the Term DIP Lenders (together with the ABL DIP Lenders, the “DIP Lenders”) to establish the Term DIP Facility in favor of the Debtors pursuant to which the Debtors may obtain loans (the “Term DIP Loans”; and together with the ABL DIP Loans, the “DIP Loans”; and the Term DIP Loans together with the extensions of credit thereunder, the “Term DIP Credit Extensions”; together with the ABL DIP Credit Extensions, the “DIP Credit Extensions”) in an aggregate principal amount not to exceed \$35,000,000, with all DIP Loans and related obligations secured by all real and personal property of the Debtors, wherever located and whether created, acquired or arising prior to, on or after the Petition Date. The ABL DIP Lenders are willing to establish the ABL DIP Facility upon the terms and conditions set forth herein and in that certain Post-Petition Credit Agreement to be entered into by the domestic Debtors and the ABL DIP Credit Parties, substantially in the form attached to the Motion (together with all schedules, exhibits and annexes thereto, and as at any time amended, the “ABL DIP Loan Agreement”). The Term DIP Lenders are willing to establish the Term DIP Facility upon the terms and conditions set forth herein and in that certain Debtor-In-Possession Term Loan Credit Agreement to be entered into by the Debtors and the Term DIP Credit Parties, substantially in the form attached to the Motion (together with all schedules,

exhibits and annexes thereto, and as at any time amended, the “Term DIP Loan Agreement”; and together with the ABL DIP Loan Agreement, the “DIP Loan Agreements”).

E. No Credit Available on More Favorable Terms. Despite diligent efforts, the Debtors have been unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Loan Agreements and are unable to obtain adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also are unable to obtain secured credit allowable under Sections 364(c)(1), 364(c)(2) and (c)(3) of the Bankruptcy Code without granting priming liens under Section 364(d)(1) of the Bankruptcy Code and the Superpriority Claims (as defined in paragraph 4(a) below) under the terms and conditions set forth in this Interim Order and in the DIP Financing Documents (as defined below).

F. Budget. The Debtors have prepared a 13-week rolling budget in accordance with the DIP Loan Agreements (as at any time amended or supplemented with the prior written consent of each DIP Agent⁴, the “Budget”),⁵ which sets forth, among other things, the projected cash receipts and disbursements for the periods covered thereby. The DIP Credit Parties are relying upon the Budget in entering into the DIP Loan Agreements, and the Pre-Petition Credit Parties are relying upon the Budget in consenting to the terms of this Interim Order. The Debtors shall provide to the Term DIP Agent (or, following the Full Payment⁶ and satisfaction of all

⁴ Whenever approval or consent of a DIP Agent or Pre-Petition Agent is referred to in this Order, such approval or consent shall also include the prior written approval or consent of the required ABL DIP Lenders, Pre-Petition ABL Lenders, Term DIP Lenders, or Pre-Petition Term Lenders, as applicable.

⁵ The Debtors have annexed to the Motion a consolidated summary of the Budget (the “Budget Summary”). For the avoidance of doubt, the Budget Summary has been annexed to the Motion for informational purposes only and is only a summary of the more detailed Budget described herein.

⁶ As used herein, the term “Full Payment,” as applied to DIP Obligations, Pre-Petition ABL Debt, or Pre-Petition Term Debt, shall mean full, final, indefeasible payment and satisfaction of such indebtedness in cash, the cash collateralization of any contingent obligations as and to the extent required by the applicable loan documents, expiration of the Challenge Deadline (as defined below) without a challenge having been timely asserted, and, in the case of the DIP Obligations, termination of the relevant DIP Facility.

Obligations under the Term DIP Facility, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent) an updated Budget each month covering the next 13-week period, which shall be subject (i) to the approval requirements set forth in the DIP Financing Documents and, (ii) (x) following the Full Payment of all Obligations under the Term DIP Facility, to the approval of the Pre-Petition Term Agent and (y) following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, to the approval of the Pre-Petition ABL Agent. In addition, on Wednesday of each week, the Debtors shall provide each of the DIP Agents and Pre-Petition Agents with a variance report pursuant to the terms set forth in the DIP Financing Documents. All references restricting the use of DIP Loans to payment of amounts set forth in the Budget shall mean the most recent approved Budget, subject to the "Permitted Variances" as defined in the DIP Financing Documents.

G. Certain Conditions to DIP Facility. The ABL DIP Lenders' willingness to make ABL DIP Credit Extensions and the Term DIP Lenders' willingness to make Term DIP Credit Extensions are conditioned upon, among other things, (i) the Debtors obtaining Court approval to enter into the DIP Loan Agreements and all of the obligations of the Debtors and all rights and remedies of the DIP Credit Parties thereunder; (ii) the Debtors' provision of the adequate protection provided for herein for the Pre-Petition Credit Parties' interests in the Pre-Petition Collateral pursuant to Sections 361 and 363 of the Bankruptcy Code; and (iii) (x) the ABL DIP Agent receiving, on behalf of the ABL DIP Credit Parties and as security for the prompt payment of all ABL DIP Loans made by the ABL DIP Credit Parties, a perfected security interest in and lien upon, subject to the Intercreditor Agreement, each Debtor's pre-petition and post-petition

real and personal property, including, without limitation, all of each Debtor's cash, accounts, inventory, equipment, fixtures, general intangibles, documents, instruments, chattel paper, deposit accounts, letter-of-credit rights, commercial tort claims, investment property, intellectual property, real property and leasehold interests, contract rights, business interruption insurance, and books and records relating to any assets of such Debtor's and all proceeds (including, without limitation, insurance proceeds) of the foregoing, whether such assets were in existence on the Petition Date or were thereafter created, acquired or arising and wherever located (all such real and personal property, including, without limitation, all Pre-Petition Collateral and the proceeds thereof, being collectively hereinafter referred to as the "ABL DIP Collateral"); and (y) the Term DIP Agent receiving, on behalf of the Term DIP Credit Parties and as security for the prompt payment of all Term DIP Loans (except Term DIP Loans to the Jamaican Borrower) made by the Term DIP Credit Parties, a perfected security interest in and lien upon, subject to the Intercreditor Agreement, all of Debtors' pre-petition and post-petition real and personal property, including, without limitation, all of each Debtors' cash, accounts, inventory, equipment, fixtures, general intangibles, documents, instruments, chattel paper, deposit accounts, letter-of-credit rights, commercial tort claims, investment property, intellectual property, real property and leasehold interests, contract rights, business interruption insurance, and books and records relating to any assets of such Debtors and all proceeds (including, without limitation, insurance proceeds) of the foregoing, whether such assets were in existence on the Petition Date or were thereafter created, acquired or arising and wherever located (all such real and personal property, including, without limitation, all Pre-Petition Collateral and the proceeds thereof, being collectively hereinafter referred to as the "Term DIP Collateral" and collectively with the ABL DIP Collateral, the "DIP Collateral"), and that such perfected security interests and liens have the

priorities hereinafter set forth. Notwithstanding the foregoing, only the Term DIP Loans borrowed by the Jamaican Borrower shall be secured by a perfected security interest in and lien upon the Jamaican Borrower's pre-petition and post-petition real and personal property (other than equity interests that the Jamaican Borrower in Noranda Jamaica Bauxite Partners (a Jamaican partnership), which equity interests shall not be Term DIP Collateral (as defined below)). The DIP Collateral will include Avoidance Proceeds, as defined in Paragraph 3(d), subject to entry of the Final Order.

H. Adequate Protection. The Debtors acknowledge and agree that the Pre-Petition Credit Parties are entitled to adequate protection as a result of the provisions of this Interim Order granting first priority and/or priming liens on the ABL Priority Collateral and on the Term Priority Collateral, for the benefit of the ABL DIP Credit Parties and the Term DIP Credit Parties, respectively, with the relative priorities set forth in the Intercreditor Agreement; the use, sale, lease or depreciation or other diminution in value of their respective interests in the Pre-Petition Collateral; the subordination to the Carve-Out (as defined below); and the imposition of the automatic stay under Section 362(a) of the Bankruptcy Code or otherwise pursuant to Sections 361(a), 363(c), 364(c), and 364(d)(1) of the Bankruptcy Code. The adequate protection and other treatment proposed to be provided by the Debtors pursuant to this Interim Order, including as provided in paragraph F of this Interim Order with respect to Budget approval rights and paragraph 18 of this Interim Order with respect to Events of Default, are consistent with the Intercreditor Agreement and authorized by the Bankruptcy Code, will minimize disputes and litigation over use of the Pre-Petition Collateral, and will facilitate the Debtors' ability to continue their business operations through the use of the DIP Financing.

I. Interim Hearing. Pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2), the Debtors have requested in the Motion that the Court hold the Interim Hearing to consider authorizing the Debtors to obtain the DIP Loans during the period (the “Interim Period”) from the date of entry of this Order through the date on which the final hearing on the Motion pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) scheduled pursuant to Paragraph 31 of this Interim Order (the “Final Hearing”) is concluded, for purposes specified in the Budget.

J. Service of Motion and Notice of Interim Hearing. The Debtors have certified that copies of the Motion (together with the annexed copies of the proposed DIP Loan Agreements and Budget annexed thereto), and notice of the Interim Hearing have been served by electronic mail, telecopy transmission, hand delivery, overnight courier or first class United States mail upon (i) the Office of the United States Trustee (the “U.S. Trustee”), (ii) counsel to the Pre-Petition ABL Agent; (iii) counsel to the Pre-Petition Term Agent; (iv) counsel to the ABL DIP Agent; (v) counsel to the Term DIP Agent; (vi) counsel to the Term DIP Credit Parties; (vii) the indenture trustee for the Debtors’ senior unsecured notes; (viii) the Internal Revenue Service; (ix) the Securities and Exchange Commission; (x) the United States Department of Labor; (xi) the United States Attorney’s Office for the Eastern District of Missouri; (xii) the holders of the thirty (30) largest unsecured claims against the Debtors, on a consolidated basis, (xiii) the Missouri Department of Economic Development, and (xiv) New Madrid County, Missouri. The Court finds that the foregoing notice of the Motion, as it relates to this Interim Order and the Interim Hearing, is appropriate, due and sufficient for all purposes under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, including, without limitation, Sections 102(1) and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(b) and (c), and that no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

K. Finding Cause. Good cause has been shown for the entry of this Interim Order and authorization for (i) the DIP Lenders to provide the Debtors with the DIP Credit Extensions, (ii) the Debtors to accept and undertake the DIP Obligations (defined below) pursuant to the DIP Loan Agreements as hereinafter provided during the Interim Period, and (iii) the Debtors to provide the Pre-Petition Credit Parties with adequate protection as set forth herein. Each Debtor's need for financing of the type afforded by the DIP Loan Agreements is immediate and critical. Entry of this Interim Order will preserve the assets of the Debtors' estates and their value and is in the best interests of the Debtors, their creditors and their estates. The terms of the DIP Financing are fair and reasonable, reflect each Debtor's exercise of its business judgment, and are supported by reasonably equivalent value and fair consideration.

L. Finding of Good Faith. Based upon the record presented at the Interim Hearing, the DIP Financing has been negotiated in good faith and at arm's length between the Debtors, on the one hand, and the DIP Credit Parties, on the other. All of the DIP Obligations (as defined below), including, without limitation, all the DIP Credit Extensions made pursuant to the DIP Loan Agreements and all other liabilities and obligations of any Debtors under this Interim Order or in respect of credit card debt, overdrafts and related liabilities arising from treasury, depository, credit card and cash management services, or in connection with any automated clearing house transfers of funds, owing to the DIP Credit Parties shall be deemed to have been extended by the DIP Credit Parties in "good faith," as such term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by Section 364(e) of the Bankruptcy Code. The DIP Credit Parties shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

M. Jurisdiction; Core Proceeding. This Court has jurisdiction over these Chapter 11 Cases, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

N. Immediate Entry. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent the immediate grant by the Court of the interim relief sought by the Motion, each Debtor’s estate will be immediately and irreparably harmed pending the Final Hearing. The Debtors’ consummation of the DIP Financing in accordance with the terms of this Interim Order and the DIP Financing Documents is in the best interests of each Debtor’s estate and is consistent with each Debtor’s exercise of its fiduciary duties. Under the circumstances, the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and L.R. 9013-3. No further notice of the relief sought at the Interim Hearing is necessary or required.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. Grant of Motion; Authorization of Interim Financing; Use of Proceeds.

(a) The Motion is hereby GRANTED as and to the extent provided herein, and the Court hereby authorizes and approves each Debtor’s execution and delivery of the applicable DIP Loan Agreements in substantially the form annexed to the Motion (with such changes, if any, as were made prior to or as a result of the Interim Hearing or are otherwise authorized to be made as amendments to either of the DIP Loan Agreements in accordance with this Interim Order) and all instruments, security agreements, assignments, pledges, mortgages,

reaffirmations and other documents referred to therein or requested by the DIP Credit Parties to give effect to the terms thereof (the DIP Loan Agreements and all such other instruments, and documents, including, without limitation, security agreements, pledge agreements, mortgages, deeds of trust, deeds to secure debt, financing statements, amendments, waivers, consents, other modifications, and intellectual property filings, and other documents, as at any time amended, being collectively called the “DIP Financing Documents”).

(b) The Debtors are hereby authorized to borrow money pursuant to the DIP Financing Documents, on the terms and subject to the conditions, lending formulas and sub-limits set forth in any DIP Financing Document and this Interim Order, up to an aggregate principal amount outstanding at any time equal to (i) \$130,000,000 (less the amount of Pre-Petition ABL Debt outstanding at such time), subject to further reduction as set forth in the ABL DIP Loan Agreement, and subject to a Borrowing Base (as defined in the ABL DIP Loan Agreement) in the case of the ABL DIP Credit Extensions and (ii) \$35,000,000 in the case of the Term DIP Credit Extensions (in the form of Initial Term Loans and Delayed Draw Term Loans, as those terms are defined and specifically provided for in the Term DIP Loan Agreement), in each case together with interest, fees and other charges payable in connection with such DIP Credit Extensions, and to incur any and all liabilities and obligations under the DIP Financing Documents and to pay all principal, interest, fees, expenses and other obligations provided for under the DIP Financing Documents (including any obligations, to the extent provided for in the DIP Financing Documents, to indemnify the DIP Agents or DIP Lenders); provided, however, that, during the Interim Period and subject to all of the terms and conditions in the DIP Loan Agreements, the Debtors may use the DIP Loans and other DIP Credit Extensions to the extent necessary to avoid immediate and irreparable harm to the Debtors, which, for purposes hereof,

shall mean the DIP Loans used (a) in the case of ABL DIP Loans, to pay (or in the case of contingent obligations, to cash collateralize) amounts owed by any Debtor at any time to any ABL DIP Lender under any of the ABL DIP Financing Documents, including, without limitation, costs, fees and expenses at any time due thereunder, and, in the case of Term DIP Loans, to pay amounts owed by any Debtor at any time to any Term DIP Lender under any of the Term DIP Financing Documents, including, without limitation, costs, fees and expenses at any time due thereunder; (b) to make disbursements specified or authorized to be paid in the Budget and in amounts not to exceed the Permitted Variances provided in the DIP Loan Agreements (all of which shall be deemed to be made to prevent immediate and irreparable harm to the Debtors); (c) to make adequate protection and other payments to the Pre-Petition Credit Parties to the extent authorized or required herein; (d) for any other purposes specified in the Budget, any “first day” order or this Interim Order; (e) to pay other fees or expenses that are required or authorized to be paid, prior to the Final Hearing, under any of the DIP Financing Documents or this Interim Order; and (f) to fund the Carve-Out (as defined below). Except as otherwise provided in any Term DIP Financing Documents with respect to NBL, each Debtor shall be jointly and severally liable for the foregoing borrowings and extensions of credit and each other Debtor’s obligations and liabilities under the DIP Financing Documents, including, without limitation, costs, fees, and other expenses and amounts provided for in the DIP Financing Documents, in accordance with the terms of the DIP Financing Documents; provided, however, that only Debtors shall be jointly and severally liable for the ABL DIP Obligations (as defined below).

(c) In addition to the DIP Credit Extensions described above, the Debtors are authorized to incur during the Interim Period and thereafter, credit and debit card debt, overdrafts and related liabilities arising from treasury, depository, cash management services, including any

automated clearing house fund transfers provided to or for the benefit of any Debtor by any ABL DIP Credit Party (or any of their respective affiliates), provided that nothing herein shall require any ABL DIP Credit Party to incur overdrafts or to provide any such services or functions to any Debtor.

(d) No DIP Credit Party shall have any obligation or responsibility to monitor any Debtor's use of the DIP Loans or other DIP Credit Extensions, and each DIP Credit Party may rely upon each Debtor's representations that the amount of the DIP Credit Extensions requested at any time, and the use thereof, are in accordance with the requirements of this Interim Order, the Budget, the DIP Financing Documents, and Bankruptcy Rule 4001(c)(2).

(e) As provided in the ABL DIP Loan Agreement, the Pre-Petition LCs shall be treated as having been issued under the ABL DIP Loan Agreement, shall constitute part of the ABL DIP Credit Extensions, shall be entitled to all of the benefits and security of the ABL DIP Financing Documents, the DIP Collateral and this Interim Order, and from and after entry of this Interim Order shall cease to be regarded as part of the Pre-Petition ABL Debt.

(f) Upon entry of the Final Order, the Debtors may obtain and use the proceeds of ABL DIP Loans only for purposes specified in the ABL DIP Loan Agreement and the Debtors may obtain and use proceeds of the Term DIP Loans only for purposes specified in the Term DIP Loan Agreement. No proceeds of any DIP Loan shall be used to (i) make any payment in settlement or satisfaction of any pre-petition claim (excluding the Pre-Petition Debt) or administrative claim (excluding the DIP Obligations (defined below)), unless (x) in compliance with the Budget and permitted under the DIP Financing Documents, or (y) as separately approved by the Court upon notice to, and no objection from, the DIP Agents and subject to compliance with the Budget; (ii) except as expressly provided or permitted hereunder

or in the Budget or as otherwise approved by DIP Agents, to make any payment or distribution to any non-Debtor affiliate, equity holder, or insider of any Debtor, provided that in no event shall any management, advisory, consulting or similar fees be paid to or for the benefit of any affiliate that is not a Debtor, equity holder or insider, unless expressly permitted under the DIP Financing Documents; (iii) make any payment from ABL DIP Loans to any Pre-Petition Term Credit Party on account of the Pre-Petition Term Debt or any Term DIP Credit Party on account of any Term DIP Credit Extensions, or make any payment from Term DIP Loans to any Pre-Petition ABL Credit Party on account of the Pre-Petition ABL Debt or any ABL DIP Credit Party on account of any ABL DIP Credit Extensions, notwithstanding anything to the contrary in this Interim Order or any DIP Financing Documents; or (iv) in the case of proceeds of any ABL DIP Loan, make any payment, advance, intercompany advance or transfer, or any other remittance or transfer whatsoever to any Debtor or affiliate of Debtors that is not a “Borrower” under, and as defined in, the ABL DIP Credit Agreement, other than for purchases of inventory in the ordinary course of business; or (v) make any payment otherwise prohibited by this Interim Order.

2. Execution, Delivery and Performance of DIP Financing Documents. The DIP Financing Documents and any amendments thereto may be executed and delivered on behalf of each Debtor by any officer, director, or agent of such Debtor, who by signing shall be deemed to represent himself or herself to be duly authorized and empowered to execute such DIP Financing Documents and amendments for and on behalf of such Debtor; the DIP Credit Parties shall be authorized to rely upon any such person’s execution and delivery any of the DIP Financing Documents and any amendments thereto as having done so with all requisite power and authority to do so; and the execution and delivery of any of the DIP Financing Documents or any amendments thereto by any such person on behalf of such Debtor shall be conclusively presumed

to have been duly authorized by all necessary corporate, limited liability company, or other entity action (as applicable) of such Debtor. Upon execution and delivery thereof, each of the DIP Financing Documents and any amendments thereto shall constitute valid and binding obligations of each Debtor, enforceable against each Debtor to the extent and in accordance with their terms for all purposes during its Chapter 11 Case, any subsequently converted case of such Debtor under Chapter 7 of the Bankruptcy Code (each, a “Successor Case”), and after the dismissal of any Chapter 11 Case. No obligation, payment, transfer or grant of security under the DIP Financing Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including, without limitation, under Sections 502(d), 544, 548, 549 or 550 of the Bankruptcy Code or under any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim. In furtherance of the provisions of Paragraph 1 of this Interim Order, each Debtor is authorized and directed to do and perform all acts; to make, execute and deliver all DIP Financing Documents; and to pay all fees, costs and expenses, in each case as may be necessary or, at the request of either DIP Agent, desirable to give effect to any of the terms and conditions of the DIP Financing Documents and any amendments thereto, to validate the perfection of the DIP Liens (as defined below), or as may otherwise be required or contemplated by the DIP Financing Documents and any amendments thereto.

3. DIP Liens. As security for the Debtors’ payment and performance of any DIP Credit Extensions, all interest, costs, expenses, fees and other charges at any time or times payable by any Debtor to any DIP Credit Party in connection with all DIP Credit Extensions or otherwise pursuant to any of the DIP Financing Documents, all reimbursement obligations and

other indebtedness in respect of the Pre-Petition LCs, and all other indebtedness and obligations under any of the DIP Financing Documents (including, without limitation, Cash Management Obligations (as defined in the ABL DIP Loan Agreement) (to the extent any of the foregoing is owed to any of the ABL DIP Credit Parties, they are collectively called “ABL DIP Obligations”; to the extent any of the foregoing is owed to any of the Term DIP Credit Parties, they are collectively called “Term DIP Obligations”; and all of the foregoing are collectively called the “DIP Obligations”), each DIP Agent shall have, for itself and for the benefit of the DIP Credit Parties for which it serves, and is hereby granted, valid, binding, enforceable, non-avoidable and automatically and properly perfected security interests in and liens upon all of the DIP Collateral, subject to the provisions in Paragraph 3(e) (collectively, the “DIP Liens”) and in the priorities set forth herein. Subject to the provisions of Paragraph 12 hereof, the DIP Liens shall be:

(a) Unencumbered Property. Pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected, first priority (except to the extent provided otherwise in this sentence) senior liens on, and security interests in, all DIP Collateral (as defined below) (other than Avoidance Proceeds until entry of the Final Order) that is not otherwise subject to valid, perfected, enforceable and unavoidable liens on the Petition Date (collectively, the “Unencumbered Property”), which shall include, without limitation, the following and in the relative priorities specified: (i) security interests and liens of the ABL DIP Agent on the Unencumbered Property that is of a type that would be ABL Priority Collateral shall be first priority and senior to all other security interests and liens on such collateral, including security interests and liens of the Term DIP Agent and Pre-Petition Term Agent, (ii) security interests and liens of the Term DIP Agent on Unencumbered Property that is of a type that would be Term Priority Collateral (including liens on all equity interests that any Debtor

owns in another entity) shall be first priority and senior to all other liens on such collateral, including security interests and liens of the ABL DIP Agent and Pre-Petition ABL Agent, (iii) security interests and liens of the ABL DIP Agent on Unencumbered Property that is of a type that would be Term Priority Collateral shall be junior only to the security interests and liens of the Pre-Petition Term Agent, the Term DIP Agent and the Term Adequate Protection Liens (as defined below) on such collateral, and (iv) security interests and liens of the Term DIP Agent on Unencumbered Property that is of the type that would be ABL Priority Collateral shall be junior only to the security interests and liens of the Pre-Petition ABL Agent, the ABL DIP Agent and the ABL Adequate Protection Liens (as defined herein) on such collateral.

(b) Liens Junior to Certain Other Liens. Pursuant to Section 364(c)(3) of the Bankruptcy Code, (i) in the case of ABL DIP Agent, valid, binding, continuing, enforceable, fully perfected security interests and liens upon the Term Priority Collateral, which security interests and liens shall be junior to (but only to) (1) security interests and liens in favor of the Pre-Petition Term Agent and the Term DIP Agent with respect to the Term Priority Collateral, (2) the Term Adequate Protection Liens, (3) Permitted Liens (as defined in the ABL DIP Loan Agreement) to the extent such liens have priority over the ABL Security Interests, and (4) any properly perfected, valid, unavoidable, and enforceable liens in existence as of the Petition Date, but shall be senior to the security interests and liens in favor of the Pre-Petition ABL Agent with respect to the Term Priority Collateral and the ABL Adequate Protection Liens with respect to the Term Priority Collateral; and (ii) in the case of the Term DIP Agent, valid, binding, continuing, enforceable, fully perfected security interests and liens upon the ABL Priority Collateral, which security interests and liens shall be junior to (but only to) (1) security interests and liens in favor of the Pre-Petition ABL Agent and the ABL DIP Agent with respect to the

ABL Priority Collateral, (2) the ABL Adequate Protection Liens, (3) the Permitted Liens (as defined in the Term DIP Loan Agreement) to the extent such liens have priority over the Term Security Interests, and (4) any properly perfected, valid, unavoidable, and enforceable liens in existence as of the Petition Date, but shall be senior to the security interests and liens in favor of the Pre-Petition Term Agent with respect to the ABL Priority Collateral and the Term Adequate Protection Liens with respect to the ABL Priority Collateral.

(c) Priming DIP Liens. Pursuant to Section 364(d)(1) of the Bankruptcy Code, (i) in the case of ABL DIP Agent, valid, binding, continuing, enforceable, fully perfected security interests and liens upon the ABL Priority Collateral, which security interests and liens shall be prior and senior in all respects to (1) the security interests and liens in favor of the Pre-Petition ABL Agent with respect to the ABL Priority Collateral, (2) the security interests and liens in favor of the Pre-Petition Term Agent and Term DIP Agent with respect to the ABL Priority Collateral, (3) the ABL Adequate Protection Liens with respect to the ABL Priority Collateral, and (4) the Term Adequate Protection Liens with respect to the ABL Priority Collateral; and (ii) in the case of the Term DIP Agent, valid, binding, continuing, enforceable, fully perfected security interests and liens upon the Term Priority Collateral, which security interests and liens shall be prior and senior in all respects to (1) the security interests and liens in favor of the Pre-Petition Term Agent with respect to the Term Priority Collateral, (2) the security interests and liens in favor of the Pre-Petition ABL Agent and ABL DIP Agent with respect to the Term Priority Collateral, (3) the Term Adequate Protection Liens with respect to the Term Priority Collateral, and (4) the ABL Adequate Protection Loans with respect to the Term Priority Collateral. Subject to entry of the Final Order, the liens, if any there be, on any Collateral in favor of the Missouri Department of Economic Development and New Madrid County, Missouri

(collectively, the “Missouri Public Liens”), to the extent those liens are junior to the Pre-Petition Security Interests, such liens shall be junior in right and priority pursuant to Section 364(d) of the Bankruptcy Code to all of the DIP Liens securing any and all DIP Obligations.

(d) Liens on the Proceeds of Avoidance Claims. Subject to the entry of the Final Order, valid, binding, continuing, enforceable, fully perfected security interests and liens upon the proceeds (the “Avoidance Proceeds”) of all of the Debtors’ claims and causes of action pursuant to Sections 502(d), 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code (the “Avoidance Claims”). Subject to entry of the Final Order, the Avoidance Proceeds will be shared among DIP Agents (for the benefit of their respective DIP Credit Parties), with 40.3% to be remitted to ABL DIP Agent and 59.7% to be remitted to Term DIP Agent.

(e) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of any Debtor or its estate under Section 551 of the Bankruptcy Code, (B) any lien or security interest of any lessor or landlord under any agreement or applicable state law to the extent any such lien has been waived in favor of the Pre-Petition ABL Loan or the Pre-Petition Term Loans, (C) except as to a DIP Agent whose DIP Financing Documents expressly allow a post-petition lien to have priority over the DIP Liens of such DIP Agent, any post-petition liens granted by any Debtor to other persons or entities or otherwise arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of any Debtor, or (D) any intercompany or affiliate liens or security interests of the Debtors; (ii) subordinated to or made *pari passu* with any other lien or security interest under Section 363 or 364 of the Bankruptcy Code or otherwise; or (iii) subject to

Sections 510, 549 or 550 of the Bankruptcy Code. In no event shall any person or entity who pays (or, through the extension of credit to any Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or priorities granted to or in favor of, or conferred upon, any DIP Credit Party by the terms of any DIP Financing Documents or this Interim Order unless such person or entity contemporaneously causes Full Payment (as defined below) of all Pre-Petition Debt.

4. Superpriority Claims.

(a) Scope of Superpriority Claims. All DIP Obligations shall constitute joint and several allowed superpriority claims (the “Superpriority Claims”) against each Debtor (without the need to file any proof of claim) pursuant to Section 364(c)(1) of the Bankruptcy Code having priority in right of payment over all other obligations, liabilities and indebtedness of such Debtor, whether now in existence or hereafter incurred by any such Debtor, and over any and all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507, 546(c), 552(b) 726, 1113 or 1114 of the Bankruptcy Code. Such Superpriority Claims shall for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under Section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof, including, without limitation, subject to entry of the Final Order, all Avoidance Proceeds received or recovered in respect of any Avoidance Claims; provided, however, that the Superpriority Claims shall be subject to the Carve-Out (as defined below).

(b) Sharing. Other than with respect to Avoidance Proceeds (which are subject to Paragraph 3(d) above), if any distribution is made on account of the Superpriority Claims of any DIP Credit Party payable from or from the proceeds of any Unencumbered Property or proceeds thereof, the DIP Credit Parties and the Pre-Petition Credit Parties shall be entitled to a share hereof based on the priorities set forth in paragraph 3(a) above.

5. Repayment.

(a) [Repayment of Pre-Petition ABL Debt]. Upon entry of the Final Order and subject to Paragraph 22 of this Interim Order, Debtors shall pay in full in cash, by way of a dollar-for-dollar roll-up, all Pre-Petition ABL Debt to Pre-Petition ABL Credit Parties from the amount available to be drawn under the ABL DIP Loans.]

(b) Repayment of DIP Obligations. The DIP Obligations shall be due and payable, and shall be paid, as and when provided in the DIP Financing Documents and as provided herein, without defense, offset or counterclaim. Without limiting the generality of the foregoing, in no event shall any Debtor be authorized to offset or recoup any amounts owed, or allegedly owed, by any Pre-Petition Credit Party or any DIP Credit Party to any Debtor or any of its respective subsidiaries or affiliates against any of the DIP Obligations without the prior written consent of each Pre-Petition Credit Party or DIP Credit Party that would be affected by any such offset or recoupment, and no such consent shall be implied from any action, inaction or acquiescence by any Pre-Petition Credit Party or DIP Credit Party.

6. ABL Cash Collateral.

(a) Dominion Account. To the extent required in the ABL DIP Financing Documents, each Debtor shall cause all Cash Collateral constituting proceeds of ABL Priority Collateral ("ABL Cash Collateral") to be promptly deposited in an account or accounts

designated by the ABL DIP Agent (each, a “Dominion Account”), and the Debtors shall not deposit into any Dominion Account any amounts that are not proceeds of ABL Priority Collateral. Prior to the deposit of ABL Cash Collateral to the Dominion Account, each Debtor shall be deemed to hold such proceeds in trust for the benefit of the ABL DIP Credit Parties. The ABL DIP Agent shall be entitled to apply such ABL Cash Collateral to the payment of the Pre-Petition ABL Debt or the ABL DIP Obligations as authorized by this Interim Order and the ABL DIP Loan Agreement.

(b) Use of Cash Collateral. Prior to Full Payment of the DIP Obligations, the Debtors shall not be authorized to use any Cash Collateral except to fund the Carve-Out, and to pay (or, in the case of letters of credit, provide cash collateral for such contingent obligations) Pre-Petition ABL Debt, ABL DIP Obligations, Pre-Petition Term Debt, and Term DIP Obligations in accordance with the Intercreditor Agreement and the lien and claim priorities set forth in this Interim Order and the Final Order; provided, however, that prior to the Full Payment of the Pre-Petition ABL Debt and ABL DIP Obligations (i) that no proceeds of ABL Priority Collateral shall be used to pay any Pre-Petition Term Debt or Term DIP Credit Extensions, and no proceeds of Term Priority Collateral shall be used to pay any Pre-Petition ABL Debt or ABL DIP Credit Extensions, and prior to the Full Payment of any Pre-Petition Term Debt and Term DIP Obligations (ii) in no event shall any proceeds of ABL Priority Collateral be used to make any payment, advance, intercompany advance or transfer, or any other remittance or transfer whatsoever to any Debtor or affiliate of Debtors that is not a “Borrower” under, and as defined in, the ABL DIP Credit Agreement, other than for purchases of inventory in the ordinary course of business.

7. Adequate Protection of Pre-Petition ABL Credit Parties. As adequate protection of its interests in the Pre-Petition Collateral, until Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent (on behalf of the Pre-Petition ABL Credit Parties) is entitled, pursuant to Sections 105, 361, 363 and 364 of the Bankruptcy Code, to claims or other protection of an amount equal to the difference between the Collateral Diminution (as defined below) and the cash payments made to the Pre-Petition ABL Credit Parties on account of the Pre-Petition ABL Loans (the “ABL Adequate Protection Claims”). As used in this Interim Order, “Collateral Diminution” shall mean an amount equal to the aggregate diminution of any Pre-Petition Credit Party’s interest in the value of the Pre-Petition Collateral (including Cash Collateral) from and after the Petition Date for any reason, including, without limitation, any such diminution resulting from the use of Cash Collateral, the priming of any Pre-Petition Agent’s security interests in and liens on the Pre-Petition Collateral by the DIP Liens pursuant to the DIP Financing Documents and this Interim Order, the depreciation, sale, loss, use, or collection by any Debtor (or any other decline in value) of such Pre-Petition Collateral, and the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code, in each case to the fullest extent provided under the Bankruptcy Code. The Pre-Petition ABL Agent is hereby granted, subject to the rights of third parties preserved under Paragraph 22, the following for the benefit of the Pre-Petition ABL Credit Parties:

(a) ABL Adequate Protection Liens. The Pre-Petition ABL Agent, for the benefit of the Pre-Petition ABL Credit Parties, is hereby granted (effective and perfected upon the date of entry of this Interim Order and without the necessity of the execution, filing or recording by any Debtor, the Pre-Petition ABL Agent or any other Pre-Petition ABL Credit Party of security agreements, pledge agreements, mortgages, financing statements or other agreements)

valid, perfected replacement security interests in and liens on all of the DIP Collateral (the “ABL Adequate Protection Liens”); provided that the ABL Adequate Protection Liens will attach to Avoidance Proceeds upon entry of the Final Order. The ABL Adequate Protection Liens shall be junior and subordinate only to the Carve-Out, the ABL DIP Liens, and any liens that are senior to the ABL DIP Liens as and to the extent expressly provided in this Interim Order. The ABL Adequate Protection Liens shall not be subject to Sections 506(c) (effective upon entry of the Final Order), 510, 549, or 550 of the Bankruptcy Code, and no lien avoided and preserved for the benefit of any estate pursuant to Section 510 of the Bankruptcy Code shall be made *pari passu* with or senior to any ABL Adequate Protection Liens.

(b) Cash Payments. The Pre-Petition ABL Agent, for the benefit of the Pre-Petition ABL Credit Parties, is hereby entitled to receive as additional adequate protection cash payments of interest each month , in arrears, on the first of the month, at the non-default interest rate under the Pre-Petition ABL Loan Documents (including, for the avoidance of doubt, payment of all prepetition accrued and unpaid interest under the Pre-Petition ABL Loan Documents), provided, however, that Pre-Petition ABL Credit Parties reserve all rights to seek payment of interest on the principal amount of the Pre-Petition ABL Debt at the default rate under the Pre-Petition ABL Loan Documents, including, for any month in which interest was paid at the non-default rate, the difference between interest calculated at the default rate and interest calculated at the non-default.

(c) Priority of ABL Adequate Protection Claims. The ABL Adequate Protection Claims, if any, will be allowed as superpriority administrative claims pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code, which, subject to the Carve-Out and the Superpriority Claims, shall have priority in payment over any and all administrative expenses of

the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, which shall at all times be senior to the rights of each Pre-Petition Obligor, and any successor trustee or any creditor in these Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code; provided that, prior to the entry of a Final Order, the ABL Adequate Protection Claims shall not be payable from or have recourse to Avoidance Proceeds.

(d) Application of Proceeds of Pre-Petition Accounts. [Until the roll up of the Pre-Petition ABL Loan after entry of the Final Order pursuant to Paragraph 5(a) above,] all collections and proceeds of accounts receivable and other rights to payment (excluding payment rights that are not ABL Priority Collateral) (collectively, the “Pre-Petition Accounts”) will be presumed to constitute and arise from ABL Priority Collateral existing on the Petition Date or arise from the sale, lease or other disposition of inventory of a Pre-Petition Obligor or from such Pre-Petition Obligor’s provision of services, including, without limitation, all payments by account obligors indebted to such Pre-Petition Obligor with respect to transactions entered into or concluded prior to the Petition Date, and will be applied to pay (or in the case of contingent obligations, to cash collateralize) the Pre-Petition ABL Debt in such order of application as the Pre-Petition ABL Agent shall elect, in its discretion, until Full Payment of the Pre-Petition ABL Debt, and then applied to the ABL DIP Obligations in such order of application as the ABL DIP Agent may elect in its discretion until Full Payment thereof. The Pre-Petition ABL Agent shall be entitled to assume that all deposits to the Dominion Account and all collections of accounts receivable received by a Pre-Petition Obligor after the Petition Date constitute proceeds of Pre-Petition Accounts, until such time as the Pre-Petition ABL Agent has received and applied to the

Pre-Petition ABL Debt an amount equal to the aggregate balance of the Pre-Petition Accounts on the books and records of Pre-Petition Obligors as of the Petition Date. Notwithstanding the preceding sentence, on the closing date of the ABL DIP Loan Agreement, Debtors shall be entitled to retain Cash Collateral in their possession on such date in an amount up to but not exceeding \$10,000,000, which Cash Collateral shall be used by the Debtors solely for such purposes and in such amounts that proceeds of ABL DIP Loans may be used hereunder and under the ABL DIP Loan Agreement, and at least \$5,000,000 of such amount shall be expended by Debtors prior to their requesting any ABL DIP Loans.

(e) [Use of Pre-Petition Inventory]. In consideration of any Debtor's use, consumption, sale or other disposition of any raw materials, work-in-process, finished goods, packaging materials or labels that were in existence on the Petition Date (collectively, "Pre-Petition Inventory"), Debtors shall pay to Pre-Petition ABL Agent, concurrently with any use, consumption, sale or other disposition thereof, the gross book value (in the manner reported to Pre-Petition ABL Agent or ABL DIP Agent on Debtors' pre-petition borrowing base certificates, which value reflects lower of cost or market adjustments made by Pre-Petition Obligors or Debtors consistent with past practices) of such Pre-Petition Inventory and Pre-Petition ABL Agent shall be authorized to apply all such payments to the Pre-Petition ABL Debt (in such order of application as Pre-Petition ABL Agent may elect in its discretion consistent with the Pre-Petition ABL Credit Agreement) until Full Payment of the Pre-Petition ABL Debt (or, in the case of contingent obligations, cash collateralized) in full. Based upon representations of Debtor representatives at or prior to the Interim Hearing, the total gross book value of all Pre-Petition Inventory as of the Petition Date was approximately [\$113,393,888] (the "Pre-Petition Inventory Amount") and, therefore, the aggregate of all payments made to Pre-Petition ABL Agent

pursuant to the provisions of this subparagraph shall not exceed such amount. For purposes of implementing this measure of adequate protection, it shall be assumed that Debtors' use, consumption, sale or other disposition of any inventory after the Petition Date, including, without limitation, raw materials, work-in-process, finished goods, packaging materials or labels, constitutes a use of Pre-Petition Inventory until the aggregate amount of the payments received by Pre-Petition ABL Agent under this subparagraph equals the Pre-Petition Inventory Amount. Regardless of whether the Debtors have utilized the retained cash referred to in clause (a) above, the ABL DIP Credit Parties are authorized to make ABL DIP Loans in amounts sufficient to satisfy the Debtors' payment obligations under this subparagraph and to disburse such ABL DIP Loans directly to the Pre-Petition ABL Agent for application to the Pre-Petition ABL Debt. All such ABL DIP Loans shall be entitled to all of the benefits and security of the DIP Financing Documents and this Order.]

(f) Fees and Expenses of Professionals for Pre-Petition ABL Credit Parties.

As additional adequate protection, the Debtors shall pay (i) the reasonable and documented professional fees and expenses (including, but not limited to, the fees and disbursements of counsel, third-party consultants, including financial consultants, and auditors) payable to or incurred by any Pre-Petition ABL Credit Party under and pursuant to the Pre-Petition ABL Loan Documents arising prior to the Petition Date, and (ii) on a current basis, the reasonable and documented professional fees and expenses (including, but not limited to, the fees and disbursements of counsel, third-party consultants, including financial consultants, and auditors) payable to or incurred by any Pre-Petition ABL Credit Party under and pursuant to the Pre-Petition ABL Loan Documents arising on or subsequent to the Petition Date. The Debtors shall pay the fees, expenses and disbursements set forth in this Paragraph 7(f) no later than ten (10)

days (the “Review Period”) after the receipt by counsel for the Debtors, counsel for the Official Committee of Unsecured Creditors (individually, or if more than one statutory committee is appointed, jointly and severally, the “Committee”), if appointed, and the U.S. Trustee of invoices therefor (the “Invoiced ABL Fees”) (which invoices may be redacted or summarized for an applicable privilege or the work product doctrine) and without the necessity of filing formal fee applications, including such amounts arising before and after the Petition Date; provided, however, that Debtors, the Committee and the U.S. Trustee may dispute the payment of any portion of the Invoiced ABL Fees (the “Disputed Invoiced ABL Fees”) if, within the Review Period, (i) the Debtors pay in full the Invoiced ABL Fees, excluding the Disputed Invoiced ABL Fees, and (ii) a Debtor, the Committee, or the U.S. Trustee notifies the Pre-Petition ABL Agent in writing (to be followed by the filing with the Court, if necessary, of a motion or other pleading, on at least ten (10) days prior written notice to Pre-Petition ABL Agent and any affected Pre-Petition ABL Lender of any hearing on such motion or other pleading) setting forth the specific objections to the Disputed Invoiced ABL Fees. The Debtors shall pay any Disputed Invoiced ABL Fees promptly upon approval by the Court.

(g) Reservation of Rights. Nothing herein shall be deemed to be a waiver by any Pre-Petition ABL Credit Party of its right to request additional or further protection of its interests in any Pre-Petition Collateral, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner for any Debtor or the conversion or dismissal of any of these Chapter 11 Cases, to object to any proposed sale or disposition of the Debtors’ assets under Section 363 of the Bankruptcy Code or otherwise, or to request any other relief in these cases; nor shall anything herein or in any of the ABL DIP Financing Documents constitute an admission by a Pre-Petition ABL Credit Party regarding the quantity, quality or value of any DIP

Collateral securing the Pre-Petition ABL Debt or constitute a finding of adequate protection with respect to the interests of the Pre-Petition ABL Agent in any DIP Collateral. The Pre-Petition ABL Credit Parties shall be deemed to have reserved all rights to assert entitlement to the protections and benefits of Section 507(b) of the Bankruptcy Code in connection with any use, sale, encumbering or other disposition of any of the DIP Collateral, to the extent that the protection afforded by this Interim Order to the Pre-Petition ABL Agent's interests in any DIP Collateral proves to be inadequate.

(h) Reporting and Information Rights. The Pre-Petition ABL Agent and Pre-Petition ABL Lenders shall be entitled to the same reporting, notification and other information rights as the ABL DIP Creditor Parties under the ABL DIP Financing Documents.

8. Adequate Protection of Pre-Petition Term Credit Parties. As adequate protection of its interests in the Pre-Petition Collateral, the Pre-Petition Term Agent (on behalf of the Pre-Petition Term Credit Parties) is entitled, pursuant to Sections 105, 361, 363 and 364 of the Bankruptcy Code, to claims and other protection of an amount equal to the difference between the Collateral Diminution and the cash payments made to any Pre-Petition Term Credit Party on account of the Pre-Petition Term Loan obligations (the "Term Adequate Protection Claims," together with the ABL Adequate Protection Claims, the "Adequate Protection Claims"). The Pre-Petition Term Agent is hereby granted, subject to the rights of third parties preserved under Paragraph 22, the following for the benefit of the Pre-Petition Term Credit Parties:

(a) Term Adequate Protection Liens. The Pre-Petition Term Agent, for the benefit of the Pre-Petition Term Credit Parties, is hereby granted (effective and perfected upon the date of entry of this Interim Order and without the necessity of the execution, filing or recording by any Pre-Petition Obligor, the Pre-Petition Term Agent or any other Pre-Petition

Term Credit Party of security agreements, pledge agreements, mortgages, financing statements or other agreements) to secure the Term Adequate Protection Claims, valid, perfected replacement security interests in and liens on all of the DIP Collateral (the “Term Adequate Protection Liens”); provided that the Term Adequate Protection Liens will attach to Avoidance Proceeds upon the entry of the Final Order. The Term Adequate Protection Liens shall be junior and subordinate only to the Carve-Out, the Term DIP Liens, and any liens that are senior to the Term DIP Liens as and to the extent expressly provided in this Interim Order. The Term Adequate Protection Liens shall not be subject to Sections 506(c) (effective upon entry of the Final Order), 510, 549, or 550 of the Bankruptcy Code, and no lien avoided and preserved for the benefit of any estate pursuant to Section 510 of the Bankruptcy Code shall be made *pari passu* with or senior to any Term Adequate Protection Liens.

(b) Priority of Term Adequate Protection Claims. The Term Adequate Protection Claims, if any, will be allowed as superpriority administrative claims pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code, which, subject to the Carve-Out and the Superpriority Claims, shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, which shall at all times be senior to the rights of each Pre-Petition Obligor, and any successor trustee or any creditor in these Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, provided that, prior to the entry of a Final Order, the Term Adequate Protection Claims shall not be payable from or have recourse to Avoidance Proceeds.

(c) Cash Payments. The Pre-Petition Term Agent, for the benefit of the Pre-Petition Term Credit Parties, is hereby entitled to receive as additional adequate protection cash payments of interest each month, in arrears, on the first of the month, at the non-default interest rate under the Pre-Petition Term Loan Documents (including, for the avoidance of doubt, payment of all prepetition accrued and unpaid interest under the Pre-Petition Term Loan Documents), provided, however, that Pre-Petition Term Credit Parties reserve all rights to seek payment of interest on the principal amount of the Pre-Petition Term Debt at the default rate under the Pre-Petition Term Loan Documents, including, for any month in which interest was paid at the non-default rate, the difference between interest calculated at the default rate and interest calculated at the non-default.

(d) Fees and Expenses of Professionals for Pre-Petition Term Credit Parties. As additional adequate protection, the Debtors shall pay in cash, on a current basis, the reasonable and documented professional fees and expenses (including, but not limited to, the fees and disbursements of counsel and financial consultants) to the extent payable pursuant to the Pre-Petition Term Loan Documents, including, such reasonable and documented professional fees and expenses of one primary counsel for the Pre-Petition Term Lenders that are also Term DIP Lenders, one primary counsel for the Pre-Petition Term Agent that is also the Term DIP Agent, any necessary local counsel in the Eastern District of Missouri for the Pre-Petition Credit Parties and one financial advisor to the Pre-Petition Term Lenders that are also Term DIP Lenders, whether such fees and expenses were incurred prior to or after the Petition Date. The payment of the fees, expenses and disbursements set forth in this Paragraph 8(c) shall be made no later than the Review Period after the receipt by counsel for the Debtors, counsel for the Committee, and the U.S. Trustee of invoices thereof (the “Invoiced Term Fees”) (which invoices

may be redacted or summarized for an applicable privilege or the work product doctrine) and without the necessity of filing formal fee applications, including such amounts arising before and after the Petition Date; provided, however, that the Debtors, the Committee and the U.S Trustee may dispute the payment of any portion of the Invoiced Term Fees (the “Disputed Invoiced Term Fees”) if, within the Review Period, (i) the Debtors pay in full the Invoiced Term Fees, excluding the Disputed Invoiced Term Fees, and (ii) a Debtor, the Committee, or the U.S. Trustee notifies the Pre-Petition Term Agent in writing (to be followed by the filing with the Court, if necessary, a motion or other pleading, on at least ten (10) days prior written notice to Pre-Petition Term Agent and any affected Pre-Petition Term Lender of any hearing on such motion or other pleading) setting forth the specific objections to the Disputed Invoiced Term Fees. Debtors shall pay any Disputed Invoiced Term Fees promptly upon approval by the Court.

(e) Reservation of Rights. Nothing herein shall be deemed to be a waiver by any Pre-Petition Term Credit Party of its right to request additional or further protection of its interests in any Pre-Petition Collateral, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner for any Debtor or the conversion or dismissal of any of these Chapter 11 Cases, to object to any proposed sale or disposition of the Debtors’ assets under Section 363 of the Bankruptcy Code or otherwise, or to request any other relief in these cases; nor shall anything herein or in any of the Term DIP Financing Documents constitute an admission by a Pre-Petition Term Credit Party regarding the quantity, quality or value of any DIP Collateral securing the Pre-Petition Term Debt or constitute a finding of adequate protection with respect to the interests of the Pre-Petition Term Agent in any DIP Collateral. Each Pre-Petition Term Credit Party shall be deemed to have reserved all rights to assert entitlement to the protections and benefits of Section 507(b) of the Bankruptcy Code in connection with any use,

sale, encumbering or other disposition of any of the DIP Collateral, to the extent that the protection afforded by this Interim Order to any Pre-Petition Term Credit Party's interests in any DIP Collateral proves to be inadequate.

(f) Reporting and Information Rights. The Pre-Petition Term Agent and Pre-Petition Term Lenders shall be entitled to the same reporting, notification and other information rights as the Term DIP Creditor Parties under the Term DIP Financing Documents.

9. Payments Free and Clear. Subject only to the potential challenges by third parties to the extent permitted by Paragraph 22 below, any and all payments or proceeds remitted (a) to a DIP Agent on behalf of any DIP Credit Party or (b) to or on behalf of any Pre-Petition Credit Parties, in each case pursuant to the provisions of this Interim Order or any subsequent order of this Court, shall be received free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, Sections 506(c) (subject to entry of the Final Order) or the "equities of the case" exception of 552(b) of the Bankruptcy Code (subject to entry of the Final Order), except as otherwise provided in the Intercreditor Agreement.

10. Fees and Expenses of Estate Professionals. So long as no Event of Default (as defined below) has occurred and is continuing, and pursuant to the Carve-Out after an Event of Default, each Debtor is authorized to use Cash Collateral (other than ABL Cash Collateral required to be turned over to ABL DIP Agent or Pre-Petition ABL Agent pursuant to this Interim Order or the ABL DIP Financing Documents) and DIP Loans to pay such compensation and expense reimbursement (collectively, "Professional Fees") of professional persons (including attorneys, financial advisors, accountants, investment bankers, appraisers, and consultants) retained by any Debtor (the "Debtors Professionals") or the Committee (the "Committee")

Professionals”; the Debtors Professionals and Committee Professionals are referred to collectively as the “Professionals”), in each case, subject to Court authorization, to the extent that such compensation and expense reimbursement is authorized by the Court (including through any interim compensation procedures or ordinary course provisions approved by the Court); provided, however, that, notwithstanding anything herein or in any other order of this Court to the contrary, no proceeds of any DIP Loans or any Cash Collateral shall be used to pay Professional Fees incurred for any Prohibited Purpose (as defined below).

11. Section 506(c) Claims. Effective upon entry of a Final Order, no costs or expenses of administration shall be imposed upon any DIP Credit Party, any Pre-Petition Credit Party, or any of the Pre-Petition Collateral or DIP Collateral (collectively, the “Collateral”) pursuant to Section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of such DIP Credit Party or Pre-Petition Credit Party, and no such consent shall be implied from any action, inaction or acquiescence by any DIP Credit Party or Pre-Petition Credit Party.

12. Carve-Out. Notwithstanding anything in this Interim Order, any DIP Financing Documents, or any other order of this Court to the contrary, prior to Full Payment of the DIP Obligations, all of the rights and claims of DIP Lenders and Pre-Petition Lenders, including the DIP Liens, the Superpriority Claims, the Pre-Petition Security Interests, the Adequate Protection Liens, and the Adequate Protection Claims, shall be subject and subordinate in all respects to the payment of the Carve-Out. As used in this Interim Order, “Carve-Out” means the sum of (i) all unpaid fees required to be paid (a) to the Clerk of this Court and (b) to the Office of the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(c); (ii) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code not to exceed [\$50,000]; and (iii) in the event of (x) an occurrence and during the continuance of an “Event of

Default” as that term is defined in any of the DIP Financing Documents (an “Event of Default”), and delivery (which may be by email) of notice (a “Carve-Out Trigger Notice”) to counsel for the Debtors and counsel for the Committee (as defined below), or (y) consummation of the sale of substantially all of the Debtors’ assets, comprising the sum of (A) all allowed unpaid fees, expenses, and disbursements (regardless of when such fees, expenses, and disbursements become allowed by order of the Court)(other than for a Prohibited Purpose) incurred collectively by the Debtors and the Committee in an aggregate amount not to exceed [\$3,000,000] for services provided subsequent to receipt of the Carve-Out Trigger Notice (collectively, the “Post-Trigger Carve-Out”), plus (B) professional fees and expenses that were incurred or accrued by the Debtors or the Committee for services rendered prior to receipt of the Carve-Out Trigger Notice (regardless of when such fees, expenses, and disbursements become allowed by order of the Court), less any professional fees and expenses actually funded under the ABL DIP Facility or Term DIP Facility prior to receipt of the Carve-Out Trigger Notice, to the extent such fees and expenses are allowed by the Court (collectively, the “Pre-Trigger Carve-Out”); provided further, that nothing in this Interim Order shall be construed to impair the ability of any interested party to object to the fees or expenses of any Professional. In no event shall the Carve-Out, or the funding of any DIP Loans or use of Cash Collateral to satisfy the Carve-Out, result in any reduction in the amount of any DIP Obligations, Pre-Petition ABL Debt, or Pre-Petition Term Debt. Notwithstanding the foregoing, (x) the ABL Priority Collateral (and the liens of the Pre-Petition ABL Credit Parties and DIP ABL Credit Parties thereon), ABL Adequate Protection Liens, and the Superpriority Claims in favor of ABL DIP Credit Parties shall be subject to only 20.5% of the Carve-Out amount (the “ABL Carve-Out Share”) and the Term Priority Collateral (and the liens of the Pre-Petition Term Credit Parties and DIP Term Credit Parties thereon),

Term Adequate Protection Liens, and the Superpriority Claims in favor of the Term DIP Credit Parties shall be subject to only 79.5% of the Carve-Out amount (the “Term Carve-Out Share”); (y) the ABL DIP Credit Parties’ share of the Pre-Trigger Carve-Out shall not exceed \$_____ (the “ABL Pre-Trigger Carve-Out Amount”); and (z) in no event shall Term Credit Parties share of the Pre-Trigger Carve-Out exceed 79.5%. Promptly upon the delivery of a Carve-Out Trigger Notice, (i) the ABL Credit Parties shall be obligated to fund an ABL DIP Loan and/or make available to the Debtors ABL Cash Collateral, in an aggregate amount equal to its ABL Carve-Out Share, provided, that, whether or not an Event of Default under (and as defined in) the ABL DIP Loan Agreement has occurred or exists, the ABL DIP Credit Parties may at any time prior to delivery of a Carve-Out Trigger Notice fund a DIP Loan and/or make available to Debtor ABL Cash Collateral in an amount equal to the ABL Carve-Out Share (whereupon the ABL Carve-Out Share will be deemed satisfied), and (ii) the Term Credit Parties shall be obligated to make available to the Debtors Term Cash Collateral, in an aggregate amount equal to the Term Carve-Out, and the Debtors shall be required to deposit such funds in a segregated account (the “Carve-Out Account”) not subject to the control of the DIP Agents or the Pre-Petition Agents to fund the Carve-Out in cash and provide for payment of the Carve-Out amount; provided, however, (x) in no event shall funds allocated to the ABL Pre-Trigger Carve-Out Amount be used to pay Professional Fees in excess of the ABL Pre-Trigger Carve-Out Amount, and no funds allocated to the Post-Trigger Carve-Out shall be used to pay professional fees or expenses in excess of the Post-Trigger Carve-Out; and (y) the ABL Credit Parties and Term Credit Parties shall retain a lien on such funds in the Carve-Out Account to the extent of any surplus remaining after payment of all actual allowed claims of Professionals, such excess to

be remitted to the ABL DIP Agent and Term DIP Agent in the ratio of their relative funding contributions to the Carve-Out Account.

13. Excluded Professional Fees. Notwithstanding anything to the contrary in this Interim Order, neither the Carve-Out nor any proceeds of any DIP Credit Extensions, Cash Collateral, Letters of Credit or DIP Collateral shall be used to pay any Professional Fees (including, without limitation, expenses) in connection with any of the following (each a “Prohibited Purpose”): (a) objecting to or contesting the validity or enforceability of, or asserting any defense, counterclaim or offset to, this Interim Order or any DIP Obligations, Pre-Petition ABL Lender Debt, or Pre-Petition Term Lender Debt, or the perfected status of any of the DIP Collateral or Pre-Petition Collateral, provided that the Committee may spend up to \$50,000 (the “Investigation Budget”) for the fees and expenses incurred in connection with the investigation of, but not the litigation, objection or any challenge to, any Pre-Petition Security Interest, Pre-Petition ABL Debt, Pre-Petition Term Debt, or Pre-Petition Loan Documents; (b) asserting or prosecuting any claim or cause of action against any DIP Lender, either DIP Agent, or any Pre-Petition Credit Party, including, in each case, without limitation, for lender liability or pursuant to Section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law, or otherwise (other than to enforce the terms of a DIP Facility or this Interim Order); (c) seeking to modify any of the rights granted under this Interim Order to any DIP Lender or either DIP Agent or any Pre-Petition Credit Party (other than with the requisite consent of the applicable DIP Credit Party); or (d) objecting to, contesting, delaying, preventing or interfering with in any way with the exercise of rights and remedies by any DIP Credit Party or Pre-Petition Credit Party with respect to any DIP Collateral or Pre-Petition Collateral, as applicable, after the occurrence and during the continuance of an Event of Default, provided that

the Debtors may contest or dispute whether an Event of Default has occurred and shall be entitled to any notice provisions provided in this Interim Order.

14. Preservation of Rights Granted Under This Interim Order.

(a) Protection from Subsequent Financing Order. There shall not be entered in any of these Chapter 11 Cases or in any Successor Case any order that authorizes the obtaining of credit or the incurrence of indebtedness by any Debtor (or any trustee or examiner) that is (i) secured by a security interest, mortgage or collateral interest or lien on all or any part of the DIP Collateral that is equal or senior to the DIP Liens or Pre-Petition Liens (other than as expressly permitted in the DIP Financing Documents of each DIP Credit Party) or (ii) entitled to priority administrative status that is equal or senior to the Superpriority Claims granted to DIP Credit Parties herein (or the Adequate Protection Liens granted to the Pre-Petition Credit Parties herein); provided, however, that nothing herein shall prevent the entry of an order that specifically provides for, as a condition to the granting of the benefits of clauses (i) or (ii) above, the Full Payment of all of the DIP Obligations and Pre-Petition Obligations from the proceeds of such credit or indebtedness, and the termination of any funding commitments under the ABL DIP Facility and Term DIP Facility.

(b) Rights Upon Dismissal, Conversion or Consolidation. If any of the Chapter 11 Cases are dismissed, converted or substantively consolidated with another case, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of any of the Chapter 11 Cases shall affect the rights or remedies of any DIP Credit Party under the DIP Financing Documents or the rights or remedies of any DIP Credit Party or Pre-Petition Credit Party under this Interim Order, and all of the respective rights and remedies hereunder and thereunder of each DIP Credit Party and each Pre-Petition Credit Party shall remain in full force

and effect as if such Chapter 11 Case had not been dismissed, converted, or substantively consolidated. Unless and until Full Payment of all DIP Obligations and Adequate Protection Claims has occurred, it shall constitute an Event of Default if any Debtor seeks, or if there is entered, any order dismissing any of the Chapter 11 Cases. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims, the Adequate Protection Claims, the DIP Liens and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until Full Payment of all DIP Obligations and all Adequate Protection Claims, (ii) such Superpriority Claims, Adequate Protection Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest, (iii) the other rights granted by this Interim Order shall not be affected, including the rights granted by Paragraph 22 of this Interim Order, and (iv) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Interim Order.

(c) Survival of Interim Order. The provisions of this Interim Order, and any actions taken pursuant hereto, shall survive the entry of and shall govern with respect to any conflict with any order that may be entered confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases or any Successor Case.

(d) No Discharge. None of the DIP Obligations shall be discharged by the entry of any order confirming a plan of reorganization or liquidation in any of these Chapter 11 Cases and, pursuant to Section 1141(d)(4) of the Bankruptcy Code, each Debtor has waived such discharge.

(e) Debtors Will Not Challenge Credit Bid Rights. No Debtor shall object to any DIP Credit Party or any Pre-Petition Credit Party credit bidding up to the full amount of the applicable outstanding DIP Obligations, Pre-Petition Term Debt (as applicable), and Pre-Petition ABL Debt (as applicable), in each case including any accrued interest and expenses, in any sale of any DIP Collateral or Pre-Petition Collateral, as applicable, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise, subject in each case to the rights and duties of the parties under the Intercreditor Agreement.

(f) No Marshaling. In no event shall any DIP Credit Party or Pre-Petition Credit Party be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to any Collateral; and in no event shall any DIP Liens be subject to any pre-petition or post-petition lien or security interest that is avoided and preserved for the benefit of any Debtor’s estate pursuant to Section 551 of the Bankruptcy Code.

(g) No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any bar order establishing a deadline for the filing of proofs of claims entitled to administrative expense treatment under Section 503(b) of the Bankruptcy Code, no DIP Credit Party shall be required to file any proof of claim with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Loan Agreements and the other DIP Financing Documents applicable thereto without the necessity of filing any such proof of claim; and the failure to file any such proof of claim shall not affect the validity or enforceability of any of the DIP Financing Documents or of any indebtedness, liabilities or obligations arising at any time thereunder or prejudice or otherwise adversely affect any DIP Credit Party’s rights,

remedies, powers or privileges under any of the DIP Financing Documents, this Interim Order or applicable law.

15. Automatic Perfection of Liens. The DIP Liens, the ABL Adequate Protection Liens, and the Term Adequate Protection Liens shall be deemed valid, binding, enforceable and duly perfected upon entry of this Interim Order. Neither any Pre-Petition Credit Party nor any DIP Credit Party shall be required to file any UCC-1 financing statements, mortgages, deeds of trust, assignments, pledges, security deeds, notices of lien or any similar document or instrument or take any other action (including taking possession of any of the DIP Collateral) in order to validate the perfection of any DIP Liens, the ABL Adequate Protection Liens, or the Term Adequate Protection Liens, but all of such filings and other actions are hereby authorized by the Court. The DIP Credit Parties shall be deemed to have “control” over all deposit accounts for all purposes of perfection under the Uniform Commercial Code or any other similar laws. If the Pre-Petition ABL Agent, Pre-Petition Term Agent or either DIP Agent shall, in its discretion, choose to file or record any such mortgages, deeds of trust, assignments, pledges, security deeds, notices of lien, or UCC-1 financing statements, or take any other action to evidence the perfection of any part of the DIP Liens, the ABL Adequate Protection Liens, or the Term Adequate Protection Liens, each Debtor and its respective officers are directed to execute any documents or instruments as the Pre-Petition ABL Agent, Pre-Petition Term Agent or either DIP Agent shall request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order. Any Pre-Petition Credit Party or DIP Credit Party may, in its discretion, file a certified copy of this Interim Order in any filing office in any jurisdiction in which any Debtor is organized or has or maintains any DIP Collateral or an office, and each filing office is directed to accept such certified copy of this

Interim Order for filing and recording. Any provision of any lease, license, contract or other agreement that requires the consent or approval of one or more counterparties or requires the payment of any fees or obligations to any governmental entity, in order for a Debtor to pledge, grant, sell, assign or otherwise transfer any such interest or the proceeds thereof is hereby found to be (and shall be deemed to be) inconsistent with the provisions of the Bankruptcy Code and shall have no force and effect with respect to the transactions granting either DIP Agent a security interest in and lien on such interest, or the proceeds of any assignment and/or sale thereof by any Debtor, in accordance with the terms of the applicable DIP Financing Documents and this Interim Order.

16. Reimbursement of Expenses. All reasonable costs and expenses incurred by a DIP Agent (or, to the extent provided by the applicable DIP Loan Agreements, any DIP Lender) in connection with (i) the negotiation and drafting of any DIP Financing Documents or any amendments thereto, (ii) the preservation, perfection, protection, pursuit or enforcement of a DIP Agent's and any DIP Lender's rights or remedies hereunder or under any DIP Financing Documents or applicable law, (iii) the collection of any DIP Obligations, or (iv) the monitoring of or participation in these Chapter 11 Cases, including, without limitation, all filing and recording fees and reasonable fees and expenses of attorneys, accountants, consultants, financial advisors, appraisers and other professionals incurred by a DIP Credit Party in connection with any of the foregoing, whether any of the foregoing were incurred prior to or after the Petition Date, shall form a part of the DIP Obligations owing to such DIP Credit Party and shall be paid by the Debtors (without the necessity of filing any application with or obtaining further order from the Court) in each case, subject to and solely in accordance with the terms of the applicable DIP Financing Documents. In no event shall any statement submitted by any DIP Credit Party to

any Debtor, the Committee, the U.S. Trustee or any other interested person (or any of their respective Professionals) with respect to fees or expenses incurred for any professional retained by such DIP Credit Party operate to waive the attorney/client privilege, the work-product doctrine or any other evidentiary privilege or protection recognized under applicable law.

17. Amendments to DIP Financing Documents. The Debtors and DIP Credit Parties are hereby authorized to implement, in accordance with the terms of the applicable DIP Financing Documents and without further order of the Court, any amendments to and modifications of any of such DIP Financing Documents on the following conditions: (i) the amendment or modification must not constitute a material change to the terms of such DIP Financing Documents, (ii) copies of the amendment or modification must be served upon counsel for the Committee (if any), the U.S. Trustee, and other interested parties specifically requesting such notice under Bankruptcy Rule 2002 at least three (3) business days before the amendment or modification is to become effective, and (iii) notice of the amendment must be filed with the Court at least three (3) business days before the amendment or modification is to become effective. Any amendment or modification that constitutes a material change, to be effective, must be approved by the Court on notice and a hearing. For purposes hereof, a “material change” shall mean a change to a DIP Financing Document that operates to shorten the term of a DIP Facility or the maturity of the DIP Obligations, to increase the aggregate amount of the commitments of DIP Lenders under such DIP Facility, to increase the rate of interest or the amount of any fees other than as currently provided in or contemplated by such DIP Financing Documents, to add specific Events of Default, or to enlarge the nature and extent of remedies available to a DIP Agent following the occurrence of an Event of Default. Without limiting the generality of the foregoing, any amendment of a DIP Financing Document or this

Interim Order to postpone or extend any date or deadline therein or herein (including, without limitation, the expiration of the term of a DIP Facility) shall not constitute a “material change” and may be effectuated by Debtors and the applicable DIP Credit Parties without the need for further approval of the Court.

18. Events of Default; Remedies.

(a) Events of Default. The occurrence of any “Event of Default” under (and as defined in) either of the DIP Loan Agreements shall constitute an Event of Default (after giving effect to any applicable notice, cure and grace period in the DIP Loan Agreements) under this Interim Order. Without limiting the foregoing and notwithstanding anything to the contrary in the DIP Financing Documents, absent waiver or amendment from the Term DIP Agent (or, following the Full Payment of all Obligations under the Term DIP Facility, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent), the failure to meet the following milestones (the “Milestones”) in these Chapter 11 Cases shall constitute an immediate Event of Default without the need for any notice or action by any Pre-Petition Credit Party or DIP Credit Party:

(i) On or before the date that is 15 business days after the Petition Date, filing of the Downstream Sale Motion (as such term is defined in the Term DIP Facility).

(ii) On or before the date that is 35 days after the Petition Date, entry by this Court of the Final Order, in form and substance acceptable to the DIP Credit Parties in all respects.

(iii) On or before the date that is 45 days after the Petition Date, a final order approving the Downstream Sale Process (as such terms are defined in the Term DIP Facility), which order shall permit each of the DIP Credit Parties and Pre-Petition Credit Parties to credit bid all or some of their claims for DIP Obligations and/or Pre-Petition Debt and otherwise be in form and substance reasonably acceptable to the Term DIP Agent (or, following the Full Payment of all Obligations under the Term DIP Facility, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent).

(iv) On or before the date that is 45 business days after the Petition Date, the idling of the Debtors' aluminum smelter located in New Madrid, Missouri.

(v) On or before the date that is 60 days after the Petition Date, the proposal of a business plan, in form and substance acceptable to the Term DIP Agent (or, following the Full Payment of all Obligations under the Term DIP Facility, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent) in all respects, relating to the Upstream Business (as such term is defined in the Term DIP Facility) and including, among other things, (1) evidence of new contracts for the Debtors' chemical grade alumina product; (2) an acceptable marketing plan and timeline for the sale of all of the Debtors' assets in Orange Valley, in the parish of Saint Ann; (3) an acceptable marketing plan and timeline for the sale of all of the Debtors' real estate assets in New Madrid, Missouri; and (4) an

acceptable plan for the reduction of capital and other expenditures in the Debtors' facilities in Saint Ann parish, Jamaica.

(vi) On or before the date that is 60 days after the Petition Date, either (x) entry of a final order by this Court, in form and substance reasonably acceptable to the DIP Agents, authorizing NBL to reject that certain Bauxite Sales Agreement dated as of December 29, 2012 (the "Sherwin Contract") between NBL and Sherwin Alumina Company, LLC ("Sherwin") pursuant to Section 365 of the Bankruptcy Code; or (y) entry by this court of a final order, in form and substance reasonably acceptable to the DIP Agents in all respects, pursuant to Rule 9019 of the Bankruptcy Rules approving a settlement agreement between NBL and Sherwin regarding the Sherwin Contract and any and all claims and counterclaims between the Debtors and Sherwin, including, but not limited to, any claims arising from or relating to that certain credit agreement, dated as of December 29, 2012, between NBL, as borrower, and Surela Investments Limited (the "Sherwin Settlement"), and the occurrence of the effective date of the Sherwin Settlement.

(vii) On or before the date that is 95 days after the Petition Date, entry by the Bankruptcy Court of a final order, in form and substance reasonably acceptable to the Term DIP Agent (or, following the Full Payment of all Term DIP Obligations, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent) (i) approving the sale of the Debtors' assets and property that comprise the Downstream Business (as such term is defined in the Term DIP Facility) (the "Downstream Asset Sale") and (ii) providing that the liens and claims

of the Term DIP Lenders, ABL DIP Credit Parties, Pre-Petition ABL Credit Parties and the Pre-Petition Term Credit Parties shall attach to the proceeds of the Downstream Asset Sale in accordance with the provisions of the Final Order and the Intercreditor Agreement (after giving effect to the reduction in debt of any party who purchases assets by means of a credit bid); provided, however, that nothing herein shall be deemed a waiver of any DIP Credit Parties' rights to object to any part of the Downstream Sale Process or to any sale of assets of the Downstream Business; provided further that any failure of Debtors to achieve this milestone as a result of an objection filed by any DIP Credit Parties shall not constitute an Event of Default hereunder.

(viii) On or before the date that is 120 days after the Petition Date, closing of the sale of the Downstream Business;

(ix) On or before the date that is 90 days after the Petition Date, the Debtors having filed either (1) a plan of reorganization (the "Plan") and related disclosure statement each in a form acceptable to the Term DIP Agent (or, following the Full Payment of all Term DIP Obligations, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent) (the "Plan Filing Date") or (2) the Upstream Sale Motion (as such term is defined in the Term DIP Loan Agreement);

(x) In the event that the Plan Filing Date is met in accordance with foregoing subparagraph (the following subparagraphs (1), (2), and (3), the "Plan Milestones"):

(1) On or before the date that is 35 days after the Plan Filing Date, entry of an order approving the disclosure statement and plan solicitation procedures, each to be in a form and substance reasonably acceptable to the Term DIP Agent (or, following the Full Payment of all Term DIP Obligations, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent);

(2) On or before the date that is 90 days after the Plan Filing Date, entry of an order reasonably acceptable to the Term DIP Agent (or, following the Full Payment of all Term DIP Obligations, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent) confirming the Plan (the “Confirmation Order”);

(3) On the date that is the earlier of (x) 30 days after the entry of the Confirmation Order and (y) 210 days after the Petition Date, the occurrence of the effective date of the Plan;

(xi) In the event that the Debtors do not comply with any of the Plan Milestones (as determined in the respective sole discretion of the Term DIP Agent (or, following the Full Payment of all Term DIP Obligations, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all Obligations under the ABL DIP Facility without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent), filing of the Upstream Sale Motion within five (5) Business Days of such non-compliance.

(b) Default Remedies. Upon the occurrence of an Event of Default and during the continuance thereof, (i) the DIP Credit Parties shall be fully authorized, in their sole discretion, to terminate further DIP Credit Extensions under the respective DIP Facility, demand payment of all DIP Obligations, and, subject to the giving of any required Default Notice by an enforcing DIP Credit Party, hold and apply any balances in any accounts of the Debtors to the payment or cash collateralization of any of the DIP Obligations, but subject to the Intercreditor Agreement, and any Carve-Out (to the extent of the Term Carve-Out Share or the ABL Carve-Out Share, as applicable), or, following Full Payment of all DIP Obligations, the Pre-Petition Term Credit Parties and Pre-Petition ABL Credit Parties may terminate the Debtors' use of Term Priority Collateral or ABL Priority Collateral, as applicable; (ii) the Term DIP Agent (or, following Full Payment of all Term DIP Obligations, the Pre-Petition Term Agent) or the ABL DIP Agent (or, following Full Payment of all ABL DIP Obligations without Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent) may file with the Court and serve upon the Debtors, counsel for the Debtors, counsel for the Committee, if any, and the U.S. Trustee a written notice (a "Default Notice") setting forth the Events of Default, in which event effective five (5) business days after the Default Notice is filed (or if the Debtors, the Committee or the U.S. Trustee timely request an emergency hearing but the Court does not schedule a hearing by the fifth business day, the conclusion of the hearing when scheduled by the Court), the Term DIP Agent (or, following the Full Payment of all Term DIP Obligations, the Pre-Petition Term Agent) and the ABL DIP Agent (or, following the Full Payment of all ABL DIP Obligations without the Full Payment of the Pre-Petition ABL Debt, the Pre-Petition ABL Agent) shall be deemed to have received complete relief from the automatic stay imposed by Section 362(a) of the Bankruptcy Code with respect to all of the Pre-Petition Collateral and DIP Collateral, unless

the Court has determined that an Event of Default has not occurred and/or is not continuing. Unless otherwise ordered by the Court, any party in interest's sole recourse with respect to opposing such modification of the automatic stay under Section 362(a) of the Bankruptcy Code shall be to contest the occurrence and/or continuance of an Event of Default. Upon the effectiveness of any relief from the automatic stay granted or deemed to have been granted to the Agents, each Agent may, subject to the Intercreditor Agreement and its share of the Carve-Out, enforce its DIP Liens, the Pre-Petition Security Interests, and the Adequate Protection Liens with respect to the Collateral, take all other actions and exercise all other rights and remedies under the DIP Financing Documents, the Pre-Petition Loan Documents and applicable law that may be necessary or deemed appropriate to collect any of its DIP Obligations and/or the Pre-Petition Debt, proceed against or realize upon all or any portion of the Collateral as if these Chapter 11 Cases or any superseding Chapter 7 case was not pending, and otherwise enforce any of the provisions of this Interim Order. Any Agent's delay or failure to exercise rights and remedies under the DIP Financing Documents, this Interim Order or applicable law shall not constitute a waiver of such Agent's rights and remedies hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the DIP Loan Agreements.

(c) Rights Cumulative. The rights, remedies, powers and privileges conferred upon any DIP Credit Party pursuant to this Interim Order shall be in addition to and cumulative with those contained in the applicable DIP Financing Documents and created under applicable law.

19. Loan Administration.

(a) Cash Dominion and Control. Subject to any cash management order entered in these cases immediately after entry of this Order and execution of the ABL DIP Loan Agreement and thereafter until Full Payment of all Pre-Petition ABL Debt and all ABL DIP Obligations, the ABL DIP Agent will have exclusive control over the Primary Payment Account (as defined in the ABL DIP Loan Agreement) and the ABL DIP Agent shall implement and the Debtors shall strictly comply with the cash collection and payment provisions of the ABL DIP Loan Agreement and the ABL DIP Collateral Agreement governing the collection of accounts, including, without limitation, Section 6.13 of the ABL DIP Loan Agreement and Section 3.06 of the ABL DIP Collateral Agreement.

(b) Inspection Rights. As set forth in the DIP Financing Documents, representatives of each DIP Agent shall be authorized, with prior notice to the Debtors, to visit the business premises of any Debtor and its subsidiaries to (i) inspect any Collateral, (ii) inspect and make copies of any books and records of any Debtor, and (iii) verify or obtain supporting details concerning the financial information to be provided by any Debtor hereunder or under any of the DIP Financing Documents, and the Debtors shall facilitate the exercise of such inspection rights.

(c) DIP Agents' Right to Retain Professionals. The ABL DIP Agent is authorized to retain one firm as counsel, one additional firm as local counsel in the United States, and conflicts counsel for the ABL DIP Lenders, plus, to the extent necessary in the ABL DIP Agent's reasonable discretion, (i) an appraiser, (ii) a financial advisor and consultants (iii) an environmental consultant, and (iv) a field auditor. As provided in the ABL DIP Financing Documents, all such attorneys, appraisers, auditors and financial advisors and consultants shall

be afforded reasonable access to the Collateral and each Debtor's business premises and records, during normal business hours, for purposes of monitoring the businesses of the Debtors, verifying each Debtors' compliance with the terms of the DIP Financing Documents and this Interim Order, and analyzing or appraising all or any part of the Collateral. The Debtors shall be liable for the reasonable fees and expenses owed to or actually paid to all such attorneys, appraisers, consultants and financial advisors, and field auditors solely to the extent provided in the respective DIP Financing Documents. Each of (a) the Term DIP Agent and (b) any group of Term DIP Credit Parties holding more than 50% of the Term DIP Obligations is authorized to retain one firm as counsel, one additional firm as local counsel in the United States, one Jamaican law firm, and, if necessary, conflicts counsel, plus, to the extent necessary in the reasonable discretion of the parties described in clause (a) and (b) above, (i) an appraiser, (ii) a financial advisor and consultants, (iii) an environmental consultant, and (iv) a field auditor. As provided in the Term DIP Financing Documents, all such attorneys, appraisers, auditors and financial advisors and consultants shall be afforded reasonable access to the Collateral and each Debtor's business premises and records, during normal business hours, for purposes of monitoring the businesses of the Debtors, verifying each Debtors' compliance with the terms of the DIP Financing Documents and this Interim Order, and analyzing or appraising all or any part of the Collateral. The Debtors shall be liable for the reasonable fees and expenses owed to or actually paid to all such attorneys, appraisers, consultants and financial advisors, and field auditors solely to the extent provided in the respective DIP Financing Documents.

20. Modification of Automatic Stay. The automatic stay provisions of Section 362 of the Bankruptcy Code are hereby modified and lifted to the extent necessary to implement the provisions of this Interim Order and the DIP Financing Documents, thereby permitting each

Agent to receive collections and proceeds of Collateral for application to the DIP Obligations, Pre-Petition ABL Debt or Pre-Petition Term Debt as and to the extent provided herein, to file or record any UCC-1 financing statements, mortgages, deeds of trust, assignments, pledges, security deeds and other instruments and documents evidencing or validating the perfection of any DIP Liens or Adequate Protection Liens, and to enforce any DIP Liens and Adequate Protection Liens as and to the extent authorized by this Interim Order. Notwithstanding anything to the contrary in this Interim Order, the Pre-Petition Term Agent shall be permitted to file applicable assignment documents in respect of financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in connection with the succession by Cortland as Pre-Petition Term Agent, and the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the foregoing, and BofA's resignation as Pre-Petition Term Agent under the Pre-Petition Loan Documents shall in no way cause, create, or result in a lapse in perfection of the Pre-Petition Term Lenders' liens.

21. Effect of Appeal. Consistent with Section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Interim Order are hereafter modified, vacated or stayed on appeal:

(a) such stay, modification or vacation shall not affect the validity of any obligation, indebtedness or liability incurred or liens granted by the Debtors to any DIP Credit Party prior to the effective date of such stay, modification or vacation, or the validity, enforceability or priority of any liens, rights or claims authorized or created under the original provisions of this Interim Order or pursuant to any of the DIP Financing Documents; and

(b) any indebtedness, obligation or liability incurred by the Debtors to any DIP Credit Party under any DIP Financing Documents prior to the effective date of such stay, modification or vacation shall be governed in all respects by the original provisions of this

Interim Order and the DIP Financing Documents, and each DIP Credit Party shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Liens and priorities granted to or for its benefit herein or pursuant to the applicable DIP Financing Documents, with respect to any such indebtedness, obligation or liability. All DIP Credit Extensions under the DIP Financing Documents are deemed to have been made in reliance upon this Interim Order, and, therefore, the indebtedness resulting from such DIP Credit Extensions prior to the effective date of any stay, modification or vacation of this Interim Order cannot as a result of any subsequent order in any of these Chapter 11 Cases, or any Successor Case of a Debtor, (i) be subordinated or (ii) be deprived of the benefit or priority of the DIP Liens and the Superpriority Claims granted to DIP Credit Parties under this Interim Order or the DIP Financing Documents.

22. Effect of Stipulations on Third Parties; Deadline for Challenges.

(a) Each Debtor's admissions, stipulations, agreements and releases contained in this Interim Order, including, without limitation, those contained in Paragraph B of this Interim Order, shall be binding upon such Debtor and any successor thereto (excluding any Chapter 7 trustee or Chapter 11 trustee or examiner appointed or elected for such Debtor) under all circumstances and for all purposes.

(b) Each Debtor's admissions, stipulations, agreements and releases contained in this Interim Order, including, without limitation, those contained in Paragraph B of this Interim Order shall be binding upon all other parties in interest (including, without limitation, the Committee, any Chapter 7 trustee or Chapter 11 trustee, and any examiner appointed or elected for such Debtor) under all circumstances and for all purposes unless and to the extent (a) the Committee or another party in interest (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) having requisite standing has

timely and properly filed an adversary proceeding or contested matter by no later than the Challenge Deadline (as defined below) (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Pre-Petition ABL Debt, Pre-Petition Term Debt, or any Pre-Petition Credit Party's Liens securing such Pre-Petition Debt or (B) otherwise asserting any defenses, claims, causes of action, counterclaims or offsets against any Pre-Petition Credit Party or its respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in any way relating to the obligations under the Pre-Petition Documents, and (b) the Court rules in favor of the plaintiff in any such timely and properly filed adversary proceeding or contested matter. As used herein, the term "Challenge Deadline" means the date that is the later of (i) in the case of a party in interest with requisite standing other than any committee, [75] days after the Petition Date, provided that if a trustee or examiner is appointed prior to [75] days after the Petition Date the time for the trustee or examiner to object shall be the later of [95] days after the Petition Date or [20] days after the trustee or examiner is appointed, (ii) in the case of the Committee, [60] days after the filing of notice of appointment of the Committee, (iii) any such later date agreed to in writing by DIP Agents, in their sole discretion, and (iv) any such later date ordered by the Court for the cause shown after notice and an opportunity to be heard, provided that such order is entered before the expiration of any applicable period as set forth in clause (i) or (ii) of this sentence. Nothing contained in Paragraph 22 increases the Investigation Budget.

(c) If no such adversary proceeding or contested matter is timely and properly filed as of the applicable Challenge Deadline against a Pre-Petition Credit Party or the Court does not rule in favor of the plaintiff in any such proceeding, then in these Chapter 11 Cases and in any Successor Case, (i) each Debtor's admissions, stipulations, agreements and releases

contained in this Interim Order, including, without limitation, those contained in Paragraph B of this Interim Order, shall be binding on all parties in interest, including any committee, any trustee and any examiner, with respect to such Pre-Petition Credit Party; (ii) the Pre-Petition Debt owing to such Pre-Petition Credit Party shall constitute an allowed claim that is not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 case(s); (iii) the Pre-Petition Security Interests in favor of such Pre-Petition Credit Party shall be deemed to have been, as of the Petition Date and thereafter, legal, valid, binding, perfected, first priority security interests and liens, not subject to recharacterization, subordination, avoidance or other defense and shall not be subject to any other or further claim or challenge by any committee or any other party in interest seeking to exercise the rights of any Debtor's estate, including, without limitation, any Chapter 7 trustee or Chapter 11 trustee or examiner appointed or elected for any Debtor or any other successor in interest to a Debtor; and (iv) each Debtor (for itself, its estate and its successors and assigns) shall be deemed to have forever waived and released any and all Claims (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights that each such Debtor may have against any Pre-Petition Credit Party or any of its respective officers, directors, agents, employees, attorneys and affiliates and that arise out of or relate to any of the Pre-Petition Loan Documents or any acts, inaction, or transactions thereunder, whether disputed or undisputed, at law or in equity, or known or unknown, including, without limitation, any recharacterization, subordination, avoidance or other claim arising under or pursuant to Section 105 or Chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law. If any such adversary proceeding or contested matter is properly filed as of such dates, each Debtor's admissions, stipulations, agreements and releases contained

in this Interim Order, including, without limitation, those contained in Paragraph B of this Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) except to the extent that such admissions, stipulations, agreements and releases were expressly challenged in such adversary proceeding or contested matter and the plaintiff prevails on the merits with respect thereto. Nothing contained in this Interim Order shall vest or confer any person or entity, including any committee, with standing or authority to pursue or commence any such adversary proceeding or contested matter.

(d) Notwithstanding anything else contained in this Order, if an adversary proceeding or contested matter is timely and properly filed as of the applicable Challenge Deadline against a Pre-Petition Credit Party, the entity prosecuting that timely adversary proceeding or motion can, if successful, challenge the adequate protection provided with respect to any lien avoided and payments made to any Pre-Petition Credit Party and all of the provisions regarding Adequate Protection Claims and Adequate Protection Liens in this Order are qualified by this reservation of the rights of third parties. If the adequate protection payments made exceed the amount of adequate protection to which any Pre-Petition Credit Party is entitled, that excess shall be applied to that Pre-Petition Credit Party's allowed secured claim or as otherwise ordered by the Court.

23. Debtors' Waivers. At all times during the Chapter 11 Cases, and whether or not an Event of Default has occurred, each Debtor irrevocably waives any right that it may have to seek authority (i) to use Cash Collateral except to the extent expressly permitted in this Interim Order; (ii) until Full Payment of all DIP Obligations, the ABL Adequate Protection Claims and the Term Adequate Protection Claims, to obtain post-petition loans or other financial accommodations pursuant to Section 364(c) or (d) of the Bankruptcy Code, other than from a

DIP Credit Party on the terms and conditions set forth herein, including the lien priorities set forth in the Intercreditor Agreement; (iii) to challenge the application of any payments authorized by this Interim Order to ABL Pre-Petition Credit Parties pursuant to Section 506(b) of the Bankruptcy Code or assert that the value of the ABL Priority Collateral is less than the amount of the Pre-Petition ABL Debt (notwithstanding anything to the contrary in this Interim Order, the Debtors' waiver of the ability to assert that the value of the ABL Collateral is less than the amount of the Pre-Petition ABL Debt shall not be binding upon the Term DIP Credit Parties or Pre-Petition Credit Parties); (iv) to propose or support a plan of reorganization or liquidation that does not provide for the Full Payment of all Obligations under both the ABL DIP Facility and the Term DIP Facility; or (v) to seek relief under the Bankruptcy Code, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent any such relief would in any way restrict or impair the rights and remedies of any DIP Credit Party or any Pre-Petition Credit Party as provided in this Interim Order or any of the DIP Financing Documents, as applicable, or a DIP Credit Party's exercise of such rights or remedies, in each case subject to the terms of the Intercreditor Agreement.

24. Intercreditor Agreement. The provisions of the Intercreditor Agreement (as each may be amended by agreement of the parties thereto) shall continue in full force and effect during the pendency of the Chapter 11 Cases or any Successor Case, and all DIP Credit Parties shall be bound by the terms and provisions set forth in the Intercreditor Agreement to which they are a party except to the extent of any inconsistency with the provisions of this Interim Order, in which event the provisions of this Interim Order shall govern and control. All of the types and items of property that are included within the ABL Priority Collateral or Term Priority Collateral (as those terms are defined in the Intercreditor Agreement) and that are created, acquired or arise

after the Petition Date shall constitute ABL Priority Collateral and Term Priority Collateral, as applicable, for all purposes of the Intercreditor Agreement and this Interim Order; provided, however, that Term Priority Collateral for Term DIP Obligations shall include assets of each foreign Debtor and NHB Capital, LLC in respect of which Term DIP Agent has a DIP Lien.

25. Service of Interim Order. Promptly after the entry of this Interim Order, the Debtors shall mail, by first class mail, a copy of this Interim Order, the Motion (and all exhibits attached to the Motion), and a notice of the Final Hearing, to (without duplication) (i) the U.S. Trustee; (ii) counsel to the agent under the Debtors' Pre-Petition ABL Loan Agreement; (iii) counsel to the agent under the Debtors' Pre-Petition Term Loan Agreement; (iv) counsel to the ABL DIP Agent; (v) counsel to the Term DIP Agent; (vi) counsel to the Term DIP Credit Parties; (vii) the indenture trustee for the Debtors' senior unsecured notes; (viii) the Internal Revenue Service; (ix) the Securities and Exchange Commission; (x) the United States Department of Labor; (xi) the United States Attorney's Office for the Eastern District of Missouri; (xii) the holders of the thirty (30) largest unsecured claims against the Debtors, on a consolidated basis; (xiii) any parties that have filed requests for notices under Rule 2002 of the Bankruptcy Rules, and all parties known by a Debtor to hold or assert a material lien on any assets of a Debtor; (xiv) the Missouri Department of Economic Development; and (xv) New Madrid County, Missouri, and shall file a certificate of service regarding same with the Clerk of the Court. Such service shall constitute good and sufficient notice of the Final Hearing.

26. No Deemed Control; Exculpation; Release.

(a) In determining to make any DIP Credit Extension under a DIP Loan Agreement, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order, any Final Order or the DIP Financing Documents, no DIP Credit Party and no

Pre-Petition Credit Party shall be deemed to be in control of any Debtor or its operations or to be acting as a “responsible person,” “managing agent” or “owner or operator” (as such terms are defined in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, et seq., as amended, or any similar state or federal statute) with respect to the operation or management of such Debtor.

(b) Nothing in this Interim Order, the DIP Financing Documents, or any other document related to the DIP Facilities shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Credit Party or any Pre-Petition Credit Party any liability for any claims arising from the pre-petition or post-petition activities of any Debtor in the operation of its business or in connection with its restructuring efforts. So long as a DIP Credit Party or Pre-Petition Credit Party complies with its obligations under the applicable DIP Financing Documents and its obligations, if any, under this Interim Order and applicable law (i) such DIP Credit Party or Pre-Petition Credit Party shall not, in any way or manner, be liable or responsible for (A) the safekeeping of the Collateral, (B) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (C) any diminution in the value thereof, or (D) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person or entity; and (ii) all risk of loss, damage or destruction of the Collateral shall be borne by the Debtors.

(c) Subject to the provisions of Section 22 hereof and entry of the Final Order, and effective as of entry of the Final Order, the Debtors hereby forever, unconditionally and irrevocably release, discharge and acquit the Pre-Petition Credit Parties and the DIP Credit Parties and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and their respective heirs, predecessors, successors, and assigns (collectively, the “Releasees”) of and

from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to, as applicable, the Pre-Petition Loan Documents, the DIP Financing Documents, and/or the transactions contemplated hereunder or thereunder including, without limitation, (A) any so-called "lender liability" or equitable subordination claims or defenses, (B) any and all claims and causes of action arising under the Bankruptcy Code, and (C) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the DIP Liens, DIP Obligations, Pre-Petition Security Interests, and Pre-Petition Debt, except only for actions or omissions to act that are determined by a final and non-appealable court order to be due to Releasees' own respective gross negligence or willful misconduct. The Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Pre-Petition Debt and the DIP Obligations that the Debtors now have or may claim to have against the Releasees, arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the Court entering this Interim Order.

27. Authorization to File Master Proof of Claim. The Pre-Petition ABL Agent and Pre-Petition Term Agent shall not be required to file any proof of claim with respect to any of the Pre-Petition Debt, all of which shall be due and payable in accordance with the Pre-Petition Term Loan Documents and the Pre-Petition ABL Loan Documents and the other financing documents applicable thereto without the necessity of filing any such proof of claim; and the failure to file any such proof of claim shall not affect the validity or enforceability of the Pre-Petition Term Loan Documents or the Pre-Petition ABL Loan Documents or prejudice or

otherwise adversely affect any Pre-Petition Term Credit Party's rights, remedies, powers or privileges under any of the Pre-Petition Term Loan Documents, the Pre-Petition ABL Loan Documents, this Interim Order, or applicable law. Notwithstanding the preceding sentence, if the Pre-Petition ABL Agent and/or Pre-Petition Term Agent so elects, each of the Pre-Petition ABL Agent and Pre-Petition Term Agent shall be authorized and empowered (but not required) to (i) file (and amend and/or supplement as it sees fit) a proof of claim and/or aggregate proof of claim in each Chapter 11 Case or Successor Case for any claim described herein, on behalf of Pre-Petition ABL Credit Parties and Pre-Petition Term Credit Parties on account of their respective claims against the Debtors, (ii) file (and amend and/or supplement as it sees fit) a single proof of claim in the case of In re Noranda Aluminum, Inc. Case No. 16-[], for any claim described herein, in which such case such proof of claim will be deemed to have been filed against each of the Debtors (a "Master Proof of Claim"), and (iii) collect and receive any monies or other property payable or distributable on account of any such claims and to share such payments or property with Pre-Petition Credit Parties and Pre-Petition Term Credit Parties in accordance with their respective Pre-Petition Loan Documents, this Interim Order and the Intercreditor Agreement. Upon the filing of a Master Proof of Claim, each Pre-Petition Credit Party on whose behalf such Master Proof of Claim was filed shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against any Debtor under the applicable Pre-Petition Loan Documents, and the claim of each Pre-Petition Credit Party (and each of its respective successors and assigns) named in such Master Proof of Claim shall be treated as if each such entity had filed a separate proof of claim in each Chapter 11 Case. Neither the Pre-Petition ABL Agent nor Pre-Petition Term Agent shall be required to amend a proof of claim or a Master Proof of Claim filed by it to reflect a change in

the holder of a claim set forth therein or a reallocation among such holders of the claims asserted therein and resulting from the transfer of all or any portion of such claims. The provisions of this paragraph and each Master Proof Claim are intended solely for the purpose of administrative convenience and shall not affect any right of any Pre-Petition Credit Party (or its respective successors in interest) to vote separately on any plan of reorganization or liquidation proposed in any of these Chapter 11 Cases or to file its own proof of claim, which claim, if filed, shall be in addition to, and not in lieu of, any other proof of claim filed by any of the Pre-Petition Agents. Neither the Pre-Petition ABL Agent nor Pre-Petition Term Agent shall be required to file with a Master Proof of Claim any instruments, agreements or other documents evidencing the obligations owing by any Debtor to any Pre-Petition Credit Party, which instruments, agreements or other documents will be provided upon written request to counsel for Pre-Petition ABL Agent or Pre-Petition Term Agent, as applicable.

28. Binding Effect; Successors and Assigns. The provisions of this Interim Order shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Credit Parties and the Debtors and their respective successors and assigns (including any Chapter 11 trustee hereafter appointed for the estate of any Debtor, any Chapter 7 trustee appointed or elected in a superseding Chapter 7 case, any examiner appointed pursuant to Section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any Debtor or with respect to any property of the estate of any Debtor), and shall inure to the benefit of DIP Credit Parties and their respective successors and assigns. In no event shall any DIP Credit Party or Pre-Petition Credit Party have any obligation to make DIP Credit Extensions to, or permit the use of the Collateral (including Cash Collateral) by, any Chapter 7 trustee, Chapter 11 trustee or similar responsible person appointed or elected for the estate of any Debtor.

29. Objections Overruled. Any and all objections to the relief requested in the Motion, to the extent not otherwise withdrawn, waived, or resolved by consent at or before the Interim Hearing, and all reservations of rights included therein, are hereby OVERRULED and DENIED.

30. Final Hearing. The Final Hearing shall be held at __:00 o'clock __.m., on _____, at Courtroom ___, United States Bankruptcy Court, 111 S. 10th St., 4th Floor, St. Louis, Missouri 63102. The Final Hearing may be adjourned or postponed without further notice except announcement in open Court. If no objection to the Motion or this Interim Order is timely filed and asserted at the Final Hearing, then this Interim Order shall continue in effect in accordance with its terms subject to such modifications as the Court may make at the Final Hearing and that are acceptable to DIP Credit Parties. If any or all of the provisions of this Interim Order are modified, vacated or stayed as the result of any objection timely filed and asserted at the Final Hearing, then, without limiting the provisions of Paragraph 22 hereof, any DIP Obligations incurred prior to the effective date of such modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order, and DIP Credit Parties shall be entitled to the protections afforded under Section 364(e) of the Bankruptcy Code and to all the rights, remedies, privileges, and benefits, including, without limitation, the DIP Liens and Superiority Claims granted herein and pursuant to the DIP Financing Documents with respect to all such DIP Obligations.

31. Objection Deadline. If any party in interest shall have an objection to any of the provisions of this Interim Order, such party may assert such objection at the Final Hearing, if a written statement setting forth the basis for such objection is filed with the Court and concurrently served upon the Office of the United States Trustee, 111 S. 10th St., Suite 6.353, St.

Louis, Missouri 63102; counsel for the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attention: Elizabeth R. McColm (emccolm@paulweiss.com) and Alexander Woolverton (awoolverton@paulweiss.com) and Carmody MacDonald P.C., 120 S. Central Avenue, Suite 1800, St. Louis, Missouri 63105, Attention: Christopher J. Lawhorn (cjl@carmodymacdonald.com); counsel for ABL DIP Agent, Parker Hudson Rainer & Dobbs LLP, 303 Peachtree St. NE, Suite 3600, Atlanta, Georgia 30308, Attention: C. Edward Dobbs (edobbs@phrd.com) and, Lewis Rice LLC, 600 Washington Ave., Suite 2500, St. Louis, Missouri 63101, Attention: Larry E. Parres; counsel for Term DIP Agent, and Pre-Petition Term Agent, Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL, 60614, Attn: Michael D Messersmith (michael.messersmith@kayescholer.com), 250 W. 55th Street, New York, NY 10019, Attn: H. Stephen Castro (stephen.castro@kayescholer.com) and Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101, Attn: Mark V. Bossi (mbossi@thompsoncoburn.com); and counsel for the Term DIP Lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matt Barr (matt.barr@weil.com) and Robert J. Lemons (robert.lemons@weil.com) and Husch Blackwell LLP, 190 Carondelet Plaza, Suite 600, St. Louis, MO 63105, Attn: Marshall C. Turner (marshall.turner@huschblackwell.com) (so that such objections and responses are filed on or before __:00 __.m., prevailing Central time on _____, 2016). If an objecting party shall fail to appear at the Final Hearing and assert the basis for such objection before the Court, such objection shall be deemed to have been waived and abandoned by such objecting party.

32. Insurance. To the extent Pre-Petition ABL Agent and/or Pre-Petition Term Agent is listed as loss payee under any Debtor's insurance policies, ABL DIP Agent and/or Term DIP

Agent shall also be deemed to be the loss payee under such Debtor's insurance policies and, subject to the Intercreditor Agreement and this Interim Order, shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies.

33. DIP Collateral Rights. Except as expressly permitted in this Interim Order and the DIP Financing Documents, in the event that any person or entity holds a lien on or security interest in DIP Collateral that is junior or subordinate to the DIP Liens in such DIP Collateral receives or is paid the proceeds of such DIP Collateral, or receives any other payment with respect thereto from any other source, in each case in a manner prohibited by any of the DIP Financing Documents or this Interim Order prior to Full Payment of all DIP Obligations, such junior or subordinate lienholder shall be deemed to have received, and shall hold, the proceeds of any such DIP Collateral in trust for the applicable DIP Credit Parties, and shall immediately turn over such proceeds to such DIP Credit Parties for application in accordance with this Interim Order and the DIP Financing Documents, and the Intercreditor Agreement.

34. Conditions Precedent. No DIP Lender shall have any obligation to make any DIP Loans under the respective DIP Financing Documents unless the conditions precedent to making such extensions of credit under the respective DIP Financing Documents have been satisfied in full or waived in accordance with such DIP Financing Documents.

35. No Impact on Certain Contracts or Transactions. No rights of any person or entity in connection with a contract or transaction of the kind listed in Sections 555, 556, 559, 560 or 561 of the Bankruptcy Code, whatever such rights might or might not be, are affected by the provisions of this Interim Order.

36. Effectiveness; Enforceability. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable nunc pro tunc to the

Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be valid, take full effect, and be enforceable immediately upon entry hereof; there shall be no stay of execution or effectiveness of this Interim Order; and any stay of the effectiveness of this Interim Order that might otherwise apply is hereby waived for cause shown.

37. Inconsistencies. To the extent that any provisions in the DIP Financing Documents are expressly inconsistent with any of the provisions of this Interim Order, the provisions of this Interim Order shall govern and control.

38. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

SO ORDERED February ____, 2016

Judge Barry S. Schermer
United States Bankruptcy Judge

Order Prepared By:

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Exhibit B

ABL DIP Loan Agreement

The establishment of the Facility pursuant to this Post-Petition Credit Agreement has not been approved by any of the Lender Parties and is subject to the internal credit approvals of each Lender, finalization of all terms of this Post-Petition Credit Agreement, satisfaction of all conditions precedent contained herein, and execution of final form of Post-Petition Credit Agreement by authorized representatives of Borrowers and of each Lender Party

FORM OF POST-PETITION CREDIT AGREEMENT

dated as of February __, 2016

among

**NORANDA ALUMINUM HOLDING CORPORATION,
NORANDA ALUMINUM ACQUISITION CORPORATION,
NORANDAL USA, INC.,
NORANDA ALUMINUM, INC.,
NORANDA ALUMINA LLC,
NORANDA INTERMEDIATE HOLDING COMPANY,
GRAMERCY ALUMINA HOLDINGS II, INC.,
GRAMERCY ALUMINA HOLDINGS INC., and
NHB CAPITAL, INC.
as Borrowers,**

LENDERS FROM TIME TO TIME PARTY HERETO,

**BANK OF AMERICA, N.A.,
as administrative agent and collateral agent,**

**BANK OF AMERICA, N.A.
U.S. BANK NATIONAL ASSOCIATION
SIEMENS FINANCIAL SERVICES, INC.
WELLS FARGO BANK, N.A.
UBS SECURITIES, LLC
CITIGROUP GLOBAL MARKETS INC.
As Joint Lead Arrangers**

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POST-PETITION CREDIT AGREEMENT

THIS POST-PETITION CREDIT AGREEMENT (this "Agreement") is made on February __, 2016, by and among **NORANDA ALUMINUM HOLDING CORPORATION**, a Delaware corporation ("Holdings"); **NORANDA ALUMINUM ACQUISITION CORPORATION**, a Delaware corporation (the "Company"); **NORANDAL USA, INC.**, a Delaware corporation ("Norandal USA"); **NORANDA ALUMINUM, INC.**, a Delaware corporation ("Noranda Aluminum"); **NORANDA ALUMINA LLC**, a Delaware limited liability company ("Noranda Alumina"); **NORANDA INTERMEDIATE HOLDING CORPORATION**, a Delaware corporation ("Noranda Intermediate"); **GRAMERCY ALUMINA HOLDINGS II, INC.**, a Delaware corporation ("Gramercy II"); **GRAMERCY ALUMINA HOLDINGS INC.**, a Delaware corporation ("Gramercy I"); and **NHB CAPITAL, LLC**, a Delaware limited liability company ("NHB"), each as a borrower and Chapter 11 debtor-in-possession (individually, a "Borrower" and collectively, "Borrowers"); the financial institutions party to this Agreement from time to time as lenders and their respective successors and permitted assigns (collectively, the "Lenders"); and **BANK OF AMERICA, N.A.**, a national banking association, as administrative agent and collateral agent for Lenders (together with its successors in such capacities, "Agent"). Capitalized terms used in this Agreement and not otherwise defined herein have the meanings ascribed thereto in **Section 1.01** hereof.

Certain of Borrowers, Bank of America, N.A., in its capacity as administrative agent and collateral agent (together with its successors and assigns in such capacity, "Pre-Petition Agent") for certain financial institutions party thereto from time to time in their capacities as lenders (collectively, "Pre-Petition Lenders"), and such Pre-Petition Lenders are parties to that certain ABL Credit Agreement dated as of February 29, 2012 (as at any time amended, amended and restated, modified, supplemented and restated, the "Pre-Petition Credit Agreement"), pursuant to which Pre-Petition Lenders made loans and other extensions of credit to such Borrowers secured by all or substantially all of the real and personal property of each Borrower.

On February __, 2016 (the "Petition Date"), each Borrower filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Case" and, collectively, the "Chapter 11 Cases") in the United States Bankruptcy Court for the Eastern District of Missouri (together with any other court having jurisdiction over any of the Chapter 11 Cases or any proceeding therein from time to time, the "Court"), as Case Numbers 16-_____, 16-_____, 16-_____, 16-_____, 16-_____, 16-_____, 16-_____, 16-_____, and 16-_____.

In connection with the filing of the Chapter 11 Cases, Borrowers have requested that Lenders extend credit in the form of Revolving Facility Loans (as defined below) and Letters of Credit (as defined below) from time to time during the Availability Period (as defined below), in an aggregate principal amount not in excess of \$130,000,000, to be used by Borrowers during the Chapter 11 Cases for purposes as hereinafter set forth; and

Lenders and L/C Issuers (as defined below) are willing to extend credit to Borrowers, subject to the terms and conditions of this Agreement and subject to the terms and conditions set forth in orders of the Court approving the proposed financing.

NOW, THEREFORE, for good and valuable consideration, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"363 Sale" means a sale of Borrower's assets pursuant to Section 363 of the Bankruptcy Code upon terms and conditions satisfactory in all respects to Lender Parties.

"ABL Priority Collateral" means all Collateral that constitutes "ABL Priority Collateral" within the meaning of the Intercreditor Agreement, whether the types or items of such property that are included in the definition were in existence on the Petition Date or are created, acquired or arise thereafter.

"Acceptable Appraiser" means (a) any Person listed on Schedule 1.01(g) or (b) any other experienced and reputable appraiser reasonably acceptable to Borrowers and Agent.

"Acceptable Business Plan" means a five-year business plan, in form and substance acceptable to Agent and Required Lenders in their sole discretion in all respects, for the reorganization or other disposition of each part of the Upstream Business and including, among other things, (1) evidence of acceptable new contracts for Borrowers' chemical grade alumina product; (2) an acceptable marketing plan and timeline for the sale of all of Borrowers' assets being part of Orange Valley, in the parish of Saint Ann, Jamaica; (3) an acceptable marketing plan and timeline for the sale of all of Borrowers' real estate assets in New Madrid, Missouri; (4) an acceptable resolution to the renegotiation or rejection of the Sherwin Contract; and (5) an acceptable plan for the reduction of capital and other expenditures in Borrowers' facilities in the parish of Saint Ann, Jamaica.

"Acceptable Chapter 11 Plan" means a Chapter 11 Plan, unless consented to by Agent and Lenders in their discretion, that does not discharge or otherwise affect in any way any of the obligations of Borrowers to pay as and when due any of the Obligations and that provides for allowance of all Claims in favor of the Lender Parties as fully secured administrative priority Claims; Full Payment of all Pre-Petition Obligations and Obligations on the effective date of such Chapter 11 Plan; an effective date no later than 45 days after the date of entry of the Confirmation Order with respect to such Chapter 11 Plan; and a full and complete release of any and all Claims that each Borrower or its Estate might have or assert against any Lender Parties or any Pre-Petition Lender Parties (whether arising prior to or after the Petition Date), including all Claims that arise under any provision in Chapter 5 of the Bankruptcy Code; and which is otherwise acceptable to Agent and Lenders in their discretion.

"Account" has the meaning assigned to such term in the Collateral Agreement.

"Account Debtor" has the meaning assigned to such term in the Collateral Agreement.

"Adjusted Eurodollar Rate" means the quotient obtained (expressed as a decimal, carried out to five decimal places) by dividing (A) the applicable Eurodollar Base Rate by (B) 1.00 minus the Eurodollar Reserve Percentage.

"Administrative Questionnaire" means the Administrative Questionnaire referred to in and completed in connection with the Pre-Petition Credit Agreement.

"Affiliate" means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent" has the meaning assigned to such term in the preamble to this Agreement.

"Agent Advance" shall have the meaning assigned to such term in **Section 2.18**.

"Agent's Office" means Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as Agent may from time to time notify Borrowers and Lenders.

"Agreement" means, on any date, this Agreement as originally in effect on the Effective Date and as thereafter amended, supplemented, amended and restated or otherwise modified from time to time and in effect on such date.

"Applicable Margin" means:

(a) With respect to Revolving Facility Loans, Agent Advances and Swing Line Loans, as of any date of determination, a percentage per annum equal to, for Eurodollar Rate Loans, the Adjusted Eurodollar Rate plus 2.50% and, for Base Rate Loans, the Base Rate plus 1.50%;

(b) With respect to Incremental Revolving Facility Loans, a percentage per annum equal to, for Eurodollar Rate Loans, the Adjusted Eurodollar Rate plus 4.00% and, for Base Rate Loans, the Base Rate plus 3.00%.

(c) For the avoidance of doubt, Agent Advances and Swing Line Loans shall bear interest as Base Rate Loans. This paragraph shall not limit the rights of Agent, any Lender or any L/C Issuer, as the case may be, under **Section 2.13(c)** or **2.05(i)** or under **Article VIII** of this Agreement.

"Appropriate Lender" means, at any time, (i) with respect to the Revolving Facility, any Lender that has a Commitment with respect to the Revolving Facility at such time, (ii) with respect to the Incremental Revolving Facility, Incremental Revolving Facility Lender, or (iii) with respect to a L/C Credit Extension, a L/C Issuer at such time, as applicable.

"Assignment and Acceptance" means an assignment and acceptance entered into by any Lender and an assignee, and accepted by Agent and Borrowers (if required by such assignment and acceptance), in the form of Exhibit A-1 attached hereto or such other form as shall be approved by Agent and Borrowers (such approval not to be unreasonably withheld or delayed).

"Auto-Extension Letter of Credit" shall have the meaning specified in **Section 2.05(c)(iii)**.

"Auto-Reinstatement Letter of Credit" shall have the meaning specified in **Section 2.05(c)(iv)**.

"Availability" means, at any time, (a) the Borrowing Base at any time minus (b) the aggregate Outstanding Amounts of the Revolving Facility Credit Exposure at such time.

"Availability Period" shall mean the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the Commitment Termination Date.

"Available Cash" means, as of any date, unrestricted available cash of Borrowers and the Guarantors that as of such date is not otherwise required to be applied to any Obligations, Pre-Petition Obligations, Pre-Petition Term Loan Obligations or any Term DIP Obligations and are not prohibited from being used on such date pursuant to the DIP Financing Order then in effect.

"Avoidance Actions" means Borrowers' Claims under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement, or otherwise.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank of America" means Bank of America, N.A., and its successors and assigns.

"Bankruptcy Code" means title 11 of the United States Code.

"Bankruptcy Rules" mean the Federal Rules of Bankruptcy Procedure.

"Base Rate" means, for any day, a rate per annum equal to the highest of (i) the Prime Rate for such day, (ii) the sum of 0.50% plus the Federal Funds rate for such day and (iii) the Eurodollar Base Rate (determined by reference to clause (ii) of the definition thereof) plus 1.00%.

"Base Rate Borrowing" means a Borrowing comprised of Base Rate Loans.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" means, as to any Person, the board of directors or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors or other governing body of such entity.

"Borrower Materials" has the meaning assigned to such term in **Section 10.08**.

"Borrowers" shall have the meaning assigned to such term in the Preamble.

"Borrowing" means a group of Loans of a single Type under a single Facility and made on a single date and, in the case of Eurodollar Rate Loans, as to which a single Interest Period is in effect.

"Borrowing Base" means, at any time (but subject to the final paragraph of this definition), an amount equal to the lesser of:

- (a) the Revolving Facility Commitments **minus** the sum at such time of (x) the Pre-Petition Obligations Reserve, (y) the aggregate amount of Incremental Revolving Facility Loans outstanding at such time under (and as defined in) the Pre-Petition Credit Agreement, and (z) the amount of Non-Ordinary Course Proceeds received by Agent or Pre-Petition Agent and applied to the Obligations or the Pre-Petition Obligations; and
- (b) the result of

- (x) the sum of:
 - (i) 85.0% of the Net Amount of Eligible Accounts, **plus**
 - (ii) the lesser of the following:
 - (A) 80.0% of the lesser of the original cost or market value of Eligible Inventory (valued at any date based on first-in-first-out method of accounting), and
 - (B) 90.0% of the Orderly Liquidation Value of Eligible Inventory, **plus**
 - (iii) an amount equal to the Incremental Availability **minus** (subtract from the sum of clauses (i), (ii) and (iii))
- (y) the Reserves.

Standards of eligibility may be established by Agent from time to time in the exercise of its Reasonable Credit Judgment. Any determination by Agent in respect of the Borrowing Base shall be based on Agent's Reasonable Credit Judgment. The parties understand that the exclusionary criteria in the definitions of Eligible Accounts and Eligible Inventory, any Reserve that may be imposed as provided herein, any deductions or other adjustments to determine "lower of cost or market value" and Net Amount of Eligible Accounts and factors considered in the calculation of Orderly Liquidation Value of Eligible Inventory have the effect of reducing the Borrowing Base, and, accordingly, whether or not any provisions hereof so state, all of the foregoing shall be determined without duplication so as not to result in multiple reductions in the Borrowing Base for the same facts or circumstances.

"Borrowing Base Certificate" means a certificate by a Responsible Officer of Borrowers, substantially in the form of Exhibit B (or another form acceptable to Agent) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including, to the extent Borrowers have received notice of any such Reserve from Agent, any of the Reserves included in such calculation pursuant to clause (y) of the definition of the Borrowing Base), all in such detail as shall be reasonably satisfactory to Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate shall be made by Borrowers and certified to Agent.

"Borrowing Minimum" means \$2,500,000, except in the case of Swing Line Loans, in which case it means \$1,000,000.

"Borrowing Multiple" means \$500,000.

"Borrowing Request" means a request by a Borrower in accordance with the terms of **Section 2.03** and substantially in the form of Exhibit C-1 attached hereto.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where Agent's Office is located, except that if such day relates to any Eurodollar Rate Loan, such day shall also be a London Banking Day.

"Capital Expenditures" means, for any Person in respect of any period, the aggregate of all expenditures incurred by such Person during such period that, in accordance with GAAP, are or should be

included in "additions to property, plant or equipment" or similar items reflected in the statement of cash flows of such Person.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Carve-Out" shall have the meaning given to such term in the Interim DIP Financing Order (or, when applicable, Final DIP Financing Order).

"Carve-Out Reserve" means, on any date, an amount equal to the Lender Parties' share of the Carve-Out on such date pursuant to the then applicable DIP Financing Order.

"Cash Collateral" means cash or Cash Equivalents, and any interest or other income earned thereon, that constitutes Collateral or proceeds of Collateral or is delivered to Agent to Cash Collateralize any Obligations and as security for the Obligations to the extent provided in this Agreement.

"Cash Collateralize" or "Cash Collateralization" means to deposit in a Controlled Account or to pledge and deposit with or deliver to Agent, for the benefit of one or more of L/C Issuers or Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if Agent and the applicable L/C Issuers shall agree in their discretion, other credit support, or to provide a customary back-to-back letter of credit in support of, in each case pursuant to customary documentation in form and substance reasonably satisfactory to Agent and the applicable L/C Issuers.

"Cash Equivalents" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States government and backed by the full faith and credit of the United States government having maturities of not more than 12 months from the date of acquisition; (ii) domestic certificates of deposit and time deposits having maturities of not more than 12 months from the date of acquisition, bankers' acceptances having maturities of not more than 12 months from the date of acquisition and overnight bank deposits, in each case issued by Bank of America or any commercial bank organized under the Laws of the United States, any state thereof or the District of Columbia, which at the time of acquisition are rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and (unless issued by any Lender) not subject to offset rights in favor of such bank arising from any banking relationship with such bank; (iii) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (i) and (ii) entered into with any bank described in clause (ii) above; and (iv) commercial paper issued by Bank of America or having at the time of investment therein or a contractual commitment to invest therein a rating of A-1 (or better) by S&P or P-1 (or better) by Moody's, and having a maturity within 9 months after the date of acquisition thereof.

"Cash Management Agreement" means any agreement to provide an overdraft line or other cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, at the time it enters into a Cash Management Agreement, is a Lender, in its capacity as a party to such Cash Management Agreement.

"Cash Management Obligations" mean the Indebtedness owing at any time by a Borrower to a Cash Management Bank for Cash Management Services or otherwise under any Cash Management Agreement.

"Cash Management Order" means a "first day order" presented to the Court at or about the time of the commencement of the Chapter 11 Cases that authorizes the continuation of Borrowers' Pre-Petition cash management relationship with Bank of America and any other banks identified in such order (collectively, the "Cash Management Banks"), which order shall include, among other things, provisions authorizing each Cash Management Bank, in the Ordinary Course of Business, to set off against Deposit Accounts maintained by any Borrower with such Cash Management Bank all fees and expenses for Cash Management Services provided to such Borrower by such Cash Management Bank, analysis charges and other fees and expenses arising or incurred in connection therewith, in each case whether the foregoing are incurred or arise before or after the Petition Date, and shall otherwise be in form and substance satisfactory to Agent and each such Cash Management Bank in their discretion.

"Cash Management Services" means any services provided from time to time by any Lender or any of its Affiliates to any Borrower or its Subsidiary in connection with operations, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, overdraft line or protection, commercial credit card and merchant card, credit, purchase or debit cards, electronic funds transfer, wire transfer, controlled disbursement, overdraft, treasury, depository, information reporting, lockbox, stop payment and other banking services.

"Change in Control" shall be deemed to occur if:

(i) at any time (A) Holdings shall fail to own, directly or indirectly, beneficially and of record, 100% of the issued and outstanding Equity Interests of the Company, (B) a majority of the seats (other than vacant seats) on the Board of Directors of Holdings shall at any time be occupied by persons who were neither (i) nominated by the Board of Directors of Holdings or a Permitted Holder, (ii) appointed by directors so nominated nor (iii) appointed by a Permitted Holder, or (C) a "change of control" (or similar event) shall occur under the Term DIP Credit Documents, the Senior Notes Indenture, or any Material Indebtedness in respect of any of the foregoing or any Disqualified Stock; or

(ii) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), other than any combination of the Permitted Holders or any "group" including any Permitted Holders, shall have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting interest in Holdings' Equity Interests and the Permitted Holders shall own, directly or indirectly, less than such Person or "group" on a fully diluted basis of the voting interest in Holdings' Equity Interests.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any Laws, rule, regulation or treaty, (ii) any change in any Laws, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Chapter 11 Plan" means a plan of reorganization or liquidation filed in any of the Chapter 11 Cases under Section 1121 of the Bankruptcy Code.

"Claims" shall mean all claims, demands, rights, actions, causes of action, liabilities, duties, damages, losses, obligations, diminution in value, judgments, decrees, suits, liens, undertakings, rights to property or information, and controversies of any kind or nature whatsoever, whether absolute or contingent, due or to become due, accrued or unaccrued, disclosed or undisclosed, foreseen or unforeseen, apparent or not apparent, disputed or undisputed, liquidated or unliquidated, at law or in equity, or known or unknown, and whether existing, accrued or arising on, before or after the Petition Date, including all claims arising under state, federal or foreign Laws, common law, statutes, rules, regulations or agreements. Without limiting the generality of the foregoing, the term "Claim" shall include the items described in the definition of "Claim" in 11 U.S.C. § 101(5), all claims or causes of action under Chapter 5 of the Bankruptcy Code (including Sections 542, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code), all Claims or causes of action under Sections 105 or 362 of the Bankruptcy Code, all claims or causes of action under the Bankruptcy Rules, all claims or causes of action arising under the Uniform Fraudulent Transfer Act as in effect in any state, and all rights of contribution, subrogation, exoneration, and indemnity.

"Closing Date" means the first date on or after the Effective Date when all the conditions precedent set forth in **Section 5.02** of the Agreement are satisfied or waived by Required Lenders in writing (which, in no event, shall be more than 30 days after the Petition Date, or such later date as Agent shall agree in its discretion).

"Code" means the Internal Revenue Code of 1986.

"Collateral" means and includes all of the "Collateral" as defined in any Security Document, the Mortgaged Properties, all business interruption insurance of any Borrower (including any rights to payment thereunder that have accrued prior to or accrues after the Petition Date), all property of any Borrower in which a Lien is granted to Agent under the DIP Financing Orders, all other property that is subject to any Lien in favor of Agent or any sub-agent for the benefit of Lenders pursuant to any Security Document, and all cash and non-cash proceeds of any of the foregoing.

"Collateral Agreement" means the Collateral Agreement dated as of the date hereof between Borrowers and Agent.

"Collateral Requirement" means the requirement, subject to the Intercreditor Agreement and subject to waiver by Agent in writing in its discretion, that:

(i) on the Closing Date, Agent shall have received from each Borrower, a counterpart of the Collateral Agreement duly executed and delivered on behalf of such Person;

(ii) on the Closing Date, (A) Agent shall have received (i) a pledge of all the issued and outstanding Equity Interests of (x) each Borrower and (y) each Wholly Owned Domestic Subsidiary (other than Subsidiaries listed on Schedule 1.01(a)) owned on the Closing Date directly by or on behalf of each such Borrower and (ii) a pledge of 100% of the outstanding nonvoting Equity Interests and of 65% of the outstanding voting Equity Interests of each "first tier" Wholly Owned Foreign Subsidiary directly owned by any Borrower and (B) to the extent not previously delivered to the Pre-Petition Agent or the Pre-Petition Term Loan Agent, as applicable, Agent shall have received all certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;

(iii) (A) all Indebtedness of each Borrower and each Subsidiary except to the extent that a pledge of such promissory note or instrument would violate applicable Laws) that is owing to any Borrower shall have been pledged pursuant to the Collateral Agreement (or other applicable Security Document as reasonably required by Agent), and (B) Agent shall, if any such Indebtedness is evidenced by a promissory note or an instrument, have received all such promissory notes or instruments, together with note powers or other instruments of transfer with respect thereto endorsed in blank;

(iv) except as otherwise contemplated by any Security Document and subject to **Section 5.02(d)**, all documents and instruments, including Uniform Commercial Code financing statements, required by applicable Laws or reasonably requested by Agent to be filed, registered or recorded to create the Liens intended to be created by the Security Documents (in each case, including any supplements thereto) and perfect such Liens to the extent required by, and with the priority required by, the Security Documents, shall have been filed, registered or recorded or delivered to Agent for filing, registration or the recording concurrently with, or promptly following, the execution and delivery of each such Security Document;

(v) within 90 days (or such longer period as Agent shall determine in its discretion) of the Closing Date, if so required by Agent, Agent shall have received (A) counterparts of each Mortgage to be entered into with respect to each Mortgaged Property set forth on Schedule 1.01(b) duly executed and delivered by the record owner of such Mortgaged Property and suitable for recording or filing and, if such Mortgaged Property is an improved Real Property, (i)(x) no later than 15 days prior to the execution and delivery of such Mortgage (or such later date as Agent shall determine in its discretion), address and other identifying information with respect to such Mortgaged Property reasonably satisfactory to Agent and (y) if any improvements on such Mortgaged Property are located within any area designated by the Director of the Federal Emergency Management Agency as a "special flood hazard" area (as may be established by a completed Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such Mortgaged Property), no later than 5 days prior to the execution and delivery of such Mortgage (or such later date as Agent shall determine in its discretion), evidence of a flood insurance policy (if such insurance is required by Laws and commercially reasonably available) from a company and in an amount satisfactory to Agent for the applicable portion of the premises, naming Agent, for the benefit of Lenders, as mortgagee, or (ii) a certification from a registered engineer or land surveyor in a form reasonably satisfactory to Agent or other evidence reasonably satisfactory to Agent that none of the improvements on such Mortgaged Property is located within any area designated by the Director of the Federal Emergency Management Agency as a "special flood hazard" area and (B) such other documents including, but not limited to, any consents, agreements and confirmations of third parties (but without duplication of the documents described in clause (viii) below), as Agent may reasonably request with respect to any such Mortgage or Mortgaged Property; provided, however, that the provisions of this paragraph (vii) shall not apply with respect to Real Property if Agent shall reasonably determine that the costs of obtaining or perfecting such a security interest or adhering to the provisions of this paragraph (vii) are excessive in relation to the value of the security to be afforded thereby;

(vi) within 90 days (or such longer period as Agent shall determine in its discretion) of the Closing Date, if so required by Agent, Agent shall have received title insurance policies and surveys for the Mortgaged Property set forth on Schedule 1.01(b) as and to the extent required in the Pre-Petition Credit Agreement;

(vii) upon or prior to the delivery of the Mortgages, if so required by Agent, Agent shall have received evidence of the insurance required by the terms of the Mortgages;

(viii) except as otherwise contemplated by any Security Document, each Borrower shall have obtained all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder; and

(ix) after the Closing Date, Agent shall have received (A) such other Security Documents as may be required to be delivered pursuant to **Section 6.10**, and (B) upon reasonable request by Agent, evidence of compliance with any other requirements of **Section 6.10**.

"Commitment Fee" means a fee in an amount equal to 0.50% of the total aggregate amount of the Commitments, which fee shall be earned and payable in full at Closing.

"Commitment Termination Date" means the date that is the soonest to occur of (i) the Maturity Date; (ii) 45 days after the entry of the Interim DIP Financing Order if the Final DIP Financing Order has not been entered on or before such date; (iii) the date on which Borrowers terminate the Commitments pursuant to **Section 2.08(b)** of the Agreement; (iv) the date on which the Commitments are terminated pursuant to **Section 8.01** of the Agreement; (v) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which, for the purposes of this Agreement, shall be no later than the effective date) of any confirmed Acceptable Chapter 11 Plan or the date of entry of a confirmation order with respect to any other Chapter 11 Plan; (vi) the date of filing by any Borrower of a Chapter 11 Plan that is not an Acceptable Chapter 11 Plan; (vii) the date of entry of a confirmation order with respect to a Chapter 11 Plan filed by a Person other than a Borrower if such Chapter 11 Plan is not an Acceptable Chapter 11 Plan; (viii) the effective date on which all or substantially all of the ABL Priority Collateral has been sold in one or more 363 Sales or otherwise disposed of; (ix) the date on which Agent is granted relief from the automatic stay; (x) the acceleration of the maturity of the Loans under the Facility, including as a result of the occurrence of any Event of Default; (xi) the date on which any of the Chapter 11 Cases is dismissed or converted by the Court; (xii) the date on which Full Payment has been made of all of the Obligations and the Pre-Petition Obligations; or (xiii) the date on which the commitments under the Term DIP Credit Agreement terminate or expire.

"Commitments" means (a) with respect to any Lender, such Lender's Revolving Facility Commitment (including, in the case of Incremental Revolving Facility Lender, the Incremental Revolving Facility Commitment) and (b) with respect to Swing Line Lender, its Swing Line Commitment. The aggregate amount of Lenders' Commitments on the Closing Date is \$130,000,000, but shall be reduced, on a pro rata basis, by the amount of Non-Ordinary Course Proceeds received by Agent or Pre-Petition Agent and applied to the Obligations or the Pre-Petition Obligations.

"Committee" means an official committee of unsecured creditors appointed in any of the Chapter 11 Cases by the U.S. Trustee.

"Company" shall have the meaning ascribed to such term in the preamble to the Agreement.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and "Controlling" and "Controlled" have meanings correlative thereto.

"Controlled Account" means each Deposit Account that is subject to a Deposit Account Control Agreement in form and substance satisfactory to Agent and the L/C Issuer.

"Court" shall have the meaning ascribed to such term in the recitals of the Agreement.

"Credit Documents" means this Agreement, the Letters of Credit, the Security Documents, and any Note issued under **Section 2.09(e)**, and any and all other agreements, instruments and documents heretofore, now or hereafter executed by any Borrower or any other Person and delivered to Agent or any Lender in respect of or in connection with any Transactions contemplated by or relating to this Agreement.

"Credit Event" has the meaning assigned to such term in **Article V**.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

"Default Rate" has the meaning assigned to such term in **Section 2.13(c)**.

"Defaulting Lender" means any Lender that (i) has failed (A) to fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender has notified Agent and Borrowers in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (B) to pay to Agent, a L/C Issuer, Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit, Swing Line Loans or Agent Advances) within 2 Business Days of the date when due, (ii) has notified Borrowers, Agent, a L/C Issuer or Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (iii) has generally defaulted on its funding obligations under other loan agreements or credit agreements or other similar financing agreements, (iv) has failed, within 3 Business Days after written request by Agent or Borrowers, to confirm in writing to Agent and Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (iv) upon receipt of such written confirmation by Agent and Borrowers), or (v) has, or has a direct or indirect parent company that has, (A) becomes insolvent, or becomes generally unable to pay its debts as they become due, or admitted in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, (B) becomes the subject of a proceeding under any Debtor Relief Law, (C) has appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (D) becomes the subject of a Bail-In Action; provided that any Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that any Lender is a Defaulting Lender under any one or more of clauses (i) through (v) above, and of the effective date of such status, shall be conclusive and

binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by Agent in a written notice of such determination, which shall be delivered by Agent to Borrowers and, to the extent permitted by applicable Laws, each L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

"Deposit Account" means a "deposit account" (as defined in the Uniform Commercial Code) and also means and includes all demand, time, savings, passbook or similar accounts maintained by a Borrower with a bank or other financial institution, whether or not evidenced by an instrument, all cash and other funds held therein and all passbooks related thereto and all certificates and instruments, if any, from time to time representing, evidencing or deposited into such deposit accounts.

"Deposit Account Control Agreement" means a deposit account control agreement among Agent and a Borrower maintaining a Deposit Account at any bank or financial institution (an "Account Bank") and such Account Bank, which agreement shall be on terms reasonably satisfactory to Agent, as the same may be amended, supplemented or otherwise modified from time to time.

"DIP Budget" means the weekly statement of receipts and disbursements of Holdings and its Subsidiaries on a consolidated basis for the 13 weeks commencing with the first full one-week period ending February 12, 2016, including (i) segment breakdowns for "Bauxite," "Alumina," "Primary," "Corporate" and "Flat Rolled," (ii) breakdowns of A/R Sales ("Operating Sales") (iii) breakdowns of cash disbursements for "Metal/Scrap/Forwards," "Production Materials/Services," "Production Energy," "Freight," "Maintenance (Non-Capex)," "Contract Mining/Fuel," and "Levy/Royalties/Asset Usage" ("Operating Disbursements"), (iv) breakdowns of payroll disbursements for "Salaries/Wages/Benefits/Payroll Taxes," "Pension" and "OPEB" ("Payroll Disbursements"), (v) breakdowns of capex disbursements ("CAPEX Disbursements"), (vi) breakdowns of other disbursements for "Insurance," "Taxes (ex-Payroll)," "Other-Disbursements," Professional Fees (non-restructuring) and "Interco Elimination-Disb." ("Other Disbursements"), (vii) breakdowns of adjusted operating cash flow (excluding any "Restructuring Prof. Fees") ("Operating Cash Flow"), (viii) breakdowns of other cash flow items to get to total cash flow, including other non-operating receipts, "Term Loan B Interest," "ABL Interest," "Other Debt Service," "Restructuring Professional Payments" and "U.S. Trustee Fees," "Utility Deposits," "Critical/Foreign/Shipper Payments," "DIP Interest," "DIP Fees," "Severance and KEIP/KERP Payments" ("Non-Operating Payments"), (ix) breakdowns of net cash flow ("Net Cash Flow"), (x) beginning and ending cash balances for the period, (xi) the total net "Borrowing Base" for the weekly period on a segment by segment basis, (xii) the beginning and ending "ABL balance" and (xiii) the beginning and ending "DIP Term Loan balance"; provided that, Borrowers shall deliver to Agent an updated DIP Budget as required in **Section 6.04(m)**, and such updated budget shall become the "DIP Budget" for all purposes under the Credit Documents. The DIP Budget (including, for the avoidance of doubt, the initial DIP Budget and any updated DIP Budget) shall be in form and substance acceptable to Agent. The DIP Budget in effect on the Closing Date is the Budget attached to the DIP Financing Motion and referred to in the Interim DIP Financing Order.

"DIP Budget Variance Report/Reconciliation" means a variance report on a weekly basis setting forth (i) actual Operating Sales, Operating Disbursements, Payroll Disbursements, CAPEX Disbursements, Other Disbursements and Operating Cash Flow (as referred to in the Budget) for the prior calendar month, (ii) all variances, including Permitted Variances, on an individual line item basis, segment basis and an aggregate basis, as compared to the DIP Budget on a weekly and cumulative basis,

and (iii) an explanation, in reasonable detail, for any material variance, certified by a Financial Officer of Holdings.

"DIP Financing Motion" means the motion of Borrowers filed with the Court seeking approval of the Facility and entry of the DIP Financing Orders.

"DIP Financing Orders" means, collectively, the Interim DIP Financing Order and the Final DIP Financing Order.

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

"Domestic Subsidiary" means any Subsidiary that is not a Foreign Subsidiary or a Subsidiary listed on Schedule 1.01(a).

"Dominion Account" means a Deposit Account established by a Borrower at Bank of America or another bank acceptable to Agent, into which any proceeds from any ABL Priority Collateral may be collected or concentrated from time to time and over which Agent has exclusive control for withdrawal purposes.

"Downstream Business" means the flat rolled products business conducted at the rolling mills in (i) Huntingdon, Tennessee, (ii) Newport, Arkansas, and (iii) Salisbury, North Carolina, and all assets, facilities, Real Property, personal property, plants, equipment, inventory, and accounts receivable associated therewith.

"Downstream Sale Process" means the implementation of bidding and sale procedures in respect of all of Borrowers' assets and property that comprise the Downstream Business, approved by an order of the Court, in form and substance acceptable to Agent and Required Lenders in all respects in their discretion.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date this Agreement becomes effective in accordance with **Section 10.11** of this Agreement.

"Eligible Accounts" means all Accounts (whether in existence or arising on, before or after the Petition Date) of each Borrower reflected in the most recent Borrowing Base Certificate, except any Account with respect to which any of the exclusionary criteria set forth below applies (unless Agent in its discretion elects to include such Account):

(a) with respect to which more than 120 days have elapsed since the date of the original invoice therefor or which is more than 60 days past due; provided that Accounts listed on Schedule 1.01(h) (as updated from time to time by Borrowers (with the consent of Agent, not to be unreasonably withheld or delayed) in accordance with its normal credit approval procedure) shall be ineligible pursuant to this clause (a) only if they are more than 60 days past due or 180 days from the invoice date;

(b) with respect to which any of the representations, warranties, covenants, and agreements contained in **Section 4.05** of the Collateral Agreement are not or have ceased to be correct or have been breached;

(c) with respect to which Account (or any other Account due from such Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance, or other instrument for the payment of money has been received, presented for payment, and returned uncollected for any reason;

(d) which represents a progress billing; provided that for the purposes hereof, "progress billing" means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon completion of any further performance under the contract or agreement;

(e) with respect to which any one or more of the following events has occurred to the Account Debtor on such Account: (i) death or judicial declaration of incompetency of an Account Debtor who is an individual; (ii) the filing by or against the Account Debtor of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other relief under any Debtor Relief Law; (iii) the making of any general assignment by the Account Debtor for the benefit of creditors; (iv) the appointment of a receiver or trustee for the Account Debtor or for any of the assets of the Account Debtor, including, without limitation, the appointment of or taking possession by a "custodian," as defined in the U.S. Bankruptcy Code; (v) the institution by or against the Account Debtor of any other type of proceeding under the Bankruptcy Code, another Debtor Relief Law or otherwise or of any formal or informal proceeding for the dissolution or liquidation of, settlement of Claims against, or winding up of affairs of, the Account Debtor; (vi) the sale, assignment, or transfer of all or substantially all of the assets of the Account Debtor; (vii) the nonpayment generally by the Account Debtor of its debts as they become due; or (viii) the cessation of the business of the Account Debtor as a going concern;

(f) if 50% or more of the aggregate Dollar amount of outstanding Accounts owed at such time by the Account Debtor thereon is classified as ineligible under clause (a) preceding;

(g) owed by an Account Debtor which: (i) does not maintain its chief executive office in the United States or Canada; or (ii) is not organized under the Laws of the United States or Canada or any political subdivision, state, or province thereof; or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof; except to the extent that such Account is insured by the Export-Import Bank of the United States or secured or payable by a Letter of Credit satisfactory to Agent in its reasonable discretion; provided that up to \$15,000,000 of Accounts owed by Account Debtors reasonably acceptable to Agent that either do not maintain their chief executive office in the United States or Canada or are not organized under the Laws of the United States or Canada or any political subdivision, state, or province thereof shall constitute Eligible Accounts;

(h) Intercompany Accounts or other Accounts owed by an Account Debtor which is an Affiliate or employee of any Borrower or its Subsidiary;

(i) except as agreed by Agent as provided in clause (g) preceding or clause (l) following regarding political subdivisions of the United States but not the U.S. federal government, with respect to which either the perfection, enforceability, or validity of Agent's Lien in such Account, or Agent's right or ability to obtain direct payment to Agent of the proceeds of such Account, is governed by any federal, state, or local statutory requirements other than those of the UCC;

(j) owed by an Account Debtor to which a Borrower or any of its Subsidiaries is indebted in any way, or which is subject to any right of set-off or recoupment by the Account Debtor, unless the Account Debtor has entered into an agreement acceptable to Agent to waive set-off rights; or if the Account Debtor thereon has disputed liability or made any Claim with respect to any other Account due from such Account Debtor; but in each such case only to the extent of such indebtedness, set-off, recoupment, dispute, or Claim ;

(k) with respect to which any Borrower at the time of determination deems such Account as uncollectible;

(l) owed by any state of the United States or any municipality or other political subdivision, department, agency, public corporation or other instrumentality of any such state (unless such Borrower complies with any applicable assignment of claims act if Agent reasonably determines that its Lien therein is not or cannot be otherwise perfected);

(m) which represents a sale on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or other repurchase or return basis;

(n) which is evidenced by a promissory note or other instrument or by chattel paper;

(o) in Agent's Reasonable Credit Judgment upon 30 days' prior notice to Borrowers, with respect to which the Account Debtor is located in any state requiring the filing of a "Notice of Business Activities Report" or similar report in order to permit such Borrower to seek judicial enforcement in such state of payment of such Account, unless such Borrower has qualified to do business in such state or has filed a "Notice of Business Activities Report" or equivalent report for the then current year;

(p) which arises out of a sale not made in the Ordinary Course of Business of such Borrower;

(q) with respect to which the goods giving rise to such Account have not been shipped and delivered to, or have been rejected or objected to, by the Account Debtor or the services giving rise to such Account have not been performed by such Borrower, and, if applicable, accepted by the Account Debtor, or the Account Debtor revokes its acceptance of such goods or services, but, in each case, only to the extent of the portion of such Account applicable to goods or services in question;

(r) which arises out of an enforceable contract or order which, by its terms, validly forbids, restricts, or makes void or unenforceable the granting of a Lien by Borrowers to Agent with respect to such Account; and

(s) which is not subject to a first priority and perfected security interest in favor of Agent, for the benefit of Secured Parties, or which is subject to any other Lien other than (i) Liens securing Indebtedness that is permitted to be incurred and secured pursuant to the terms of this Agreement and that are subject to the Intercreditor Agreement (or an additional intercreditor agreement, reasonably satisfactory to Agent), providing that such Liens are subordinated in right of priority to, the Liens securing the Obligations and (ii) Permitted Liens arising by operation of applicable Laws as described in clauses (d), (e) and (k) of the definition thereof.

If any Account at any time ceases to be an Eligible Account, then such Account shall promptly be excluded from the calculation of the Borrowing Base; provided, however, that if any Account ceases to be an Eligible Account because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, Agent will not require exclusion of such Account from the Borrowing Base until 2 Business Days following the date on which Agent gives notice to Borrowers of such ineligibility.

Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by Agent, after the Closing Date), subject to the approval of Required Lenders in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect on the Closing Date. Agent acknowledges that, as of the Closing Date, it is not aware of any circumstance or condition with respect to the Accounts that would require the adjustment of any of the exclusionary criteria set forth above or the imposition of any new exclusionary criteria.

"Eligible Inventory" means all Inventory of each Borrower reflected in the most recent Borrowing Base Certificate, except any Inventory with respect to which any of the exclusionary criteria set forth below applies (unless Agent in its discretion elects to include any such Inventory):

(a) Inventory that is not owned by any Borrower;

(b) Inventory that is not subject to Agent's Liens, or is subject to any other Lien, other than (i) Liens securing Indebtedness that is permitted to be incurred and secured pursuant to the terms of this Agreement and that are subject to the Intercreditor Agreement (or an additional intercreditor agreement, reasonably satisfactory to Agent), providing that such Liens are subordinated in right of priority to the Liens securing the Obligations and (ii) Permitted Liens arising by operation of law as described in clauses (d), (e), (k) and (r) of the definition thereof; provided that, unless such Permitted Liens (A) are junior in priority to Agent's Liens (other than statutory landlord's Liens to the extent provided otherwise by a requirement of applicable Laws) and (B) do not impair directly or indirectly the ability of Agent to realize on or obtain the full benefit of the Collateral, Agent may, in the exercise of Reasonable Credit Judgment, establish a Reserve against Availability with respect to any Inventory subject to such Permitted Liens in an amount not to exceed (on an aggregate basis for all Inventory from time to time subject to such Permitted Liens) (1) in the case of Inventory subject to Liens described in clause (e) of the definition of Permitted Liens, the greater of (x) an amount equal to the amount which would have to be paid to such Lien Claimant in order to obtain a release of such Liens, and (y) with respect to landlords' liens, an amount equal to 30 days' rent for the properties or facilities on or at which the applicable Inventory is located, (2) in the case of Inventory subject to Liens described in clause (d) or (r) of the definition of Permitted Liens, the amount of such Taxes, fees, assessments, duties or other charges, and (3) in the case of Inventory subject to Liens described in clause (k) of the definition of Permitted Liens, the amount specified in such judgments or notices;

(c) Inventory that does not consist of finished goods or raw materials (except that "work-in-process" shall constitute Eligible Inventory, other than (A) any cost relating to a conversion of "work-in-process" to finished Inventory and (B) the value of any "metal-in-furnace" or Inventory in molten state that cannot be readily converted into finished goods);

(d) Inventory that consists of chemicals, supplies, packing and shipping materials, or advertising or marketing materials (including samples);

(e) Inventory that is not in good condition, is unmerchantable, or fails to meet all material standards imposed by any Governmental Authority having regulatory authority over such goods, its use, or sale;

(f) Inventory that is not currently either usable or salable in the normal course of a Borrower's business;

(g) Inventory that is slow-moving (i.e., held by a Borrower for greater than 12 months), obsolete or defective, or used goods taken in trade;

(h) Inventory that is not located within the United States (or is in-transit from vendors or suppliers, except that Inventory in-transit will not be deemed ineligible if it has been paid for in advance of shipment and legal ownership thereof has passed to a Borrower as evidenced by customary documents of title); provided that Inventory that is in-transit from any Affiliate of a Borrower located in Jamaica shall constitute Eligible Inventory regardless of whether such Inventory is located within the United States; provided, however, that, if Borrowers or their Subsidiaries shall fail to perform any action or execute any document or agreement that Agent, in its discretion, deems necessary to perfect its Lien on such Inventory (including delivery of appropriate documents of title), such Inventory shall not constitute Eligible Inventory;

(i) if such Inventory is located in a public warehouse or in possession of a bailee or in a facility leased by a Borrower; provided that such Inventory will be Eligible Inventory if the warehouseman, the bailee, or the lessor has delivered to Agent, if requested by Agent, a subordination agreement in form and substance reasonably satisfactory to Agent (or if such Borrower is unable to obtain any such subordination or such subordination has not been requested, such Inventory shall be Eligible Inventory but Agent may, in the exercise of Reasonable Credit Judgment, establish a Reserve with respect to any Inventory so located or possessed in an amount not to exceed (on an aggregate basis for all Inventory from time to time so located or possessed) (A) in the case of Inventory located in a public warehouse or leased facility, the greater of (x) an amount equal to the amount which would have to be paid to such Claimant in order to obtain a release of any Permitted Lien held by such Claimant, or (y) an amount equal to 30 days' rent or storage fee for the warehouses or facilities on or at which the applicable Inventory is located and (B) in the case of Inventory otherwise in the possession of a bailee, the amount necessary to complete any work being performed on such Inventory and/or to obtain a surrender of the Inventory to the possession of such Borrower or Agent); and

(j) if such Inventory contains or bears any Intellectual Property Rights licensed to a Borrower by any third party, Agent shall not be reasonably satisfied that it may sell or otherwise dispose of such Inventory in accordance with Article VIII without infringing the rights of the licensor of such Intellectual Property Rights or violating any contract with such licensor (and without payment of any royalties other than any royalties due with respect to the sale or disposition of such Inventory pursuant to the existing license agreement), and, if Agent deems it

necessary, such Borrower shall deliver to Agent a consent or sublicense agreement from such licensor in form and substance reasonably acceptable to Agent.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory shall promptly be excluded from the calculation of the Borrowing Base; provided that if any Inventory ceases to be Eligible Inventory because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, Agent will not require exclusion of such Inventory from the Borrowing Base until 2 Business Days following the date on which Agent gives notice to Borrowers of such ineligibility.

Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by Agent, after the Closing Date), subject to the approval of Required Lenders in the case of adjustments or new criteria which have the effect of making more credit available than would be available based upon the criteria in effect on the Closing Date. Agent acknowledges that as of the Closing Date it is not aware of any circumstance or condition with respect to the Accounts that would require the adjustment of any of the exclusionary criteria set forth above or the imposition of any new exclusionary criteria.

"environment" means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

"Environmental Laws" means all applicable Laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or Hazardous Materials).

"Equity Interests" of any Person means any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity or ownership of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with Holdings, any Borrower or a Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (i) any Reportable Event or the requirements of Section 4043(b) of ERISA apply with respect to a Plan; (ii) the failure to meet the minimum funding standards of Sections 412 and 430 of the Code and Sections 302 and 303 of ERISA; (iii) the filing pursuant to Section 412(c) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (iv) the incurrence by any Borrower or a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (v) the receipt by any Borrower, or a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice

relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (vi) the incurrence by any Borrower, a Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (vii) the receipt by any Borrower, a Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower, a Subsidiary or any ERISA Affiliate of any notice, concerning the impending imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (viii) the conditions for imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; or (ix) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA.

"Estate" means, for each Borrower, the estate created in such Borrower's Chapter 11 Case pursuant to Section 541(a) of the Bankruptcy Code.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Eurodollar Base Rate" means:

(i) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to (A) the London interbank offered rate administered by ICE Benchmark Administration ("ICE LIBOR"), as published by Reuters (or such other commercially available source providing quotations of ICE LIBOR as may be designated by Agent from time to time) at approximately 11:00 a.m., London time, 2 London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (B) if such published rate is not available at such time for any reason, the rate per annum determined by Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) 2 London Banking Days prior to the commencement of such Interest Period; and

(ii) for any interest rate calculation with respect to a Base Rate Loan, the rate per annum equal to (A) ICE LIBOR, at approximately 11:00 a.m., London time, determined 2 London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (B) if such published rate is not available at such time for any reason, the rate determined by Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

"Eurodollar Rate Borrowing" means a Borrowing comprised of Eurodollar Loans.

"Eurodollar Rate Loan" means at any date a Loan which bears interest at a rate based on the Adjusted Eurodollar Rate.

"Eurodollar Reserve Percentage" means for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or

not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any other entity succeeding to the functions currently performed thereby) for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to "Eurocurrency liabilities"). The Adjusted Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Default" has the meaning assigned to such term in **Section 8.01**.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to such Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) in the case of a Foreign Lender, withholding Taxes imposed on amounts payable to or for the account of such Foreign Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Laws in effect on the date on which (A) such Foreign Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrowers under **Section 10.14**) or (B) such Foreign Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 3.01(a)(ii)** or **Section 3.01(c)**, amounts with respect to such Taxes were payable either to such Foreign Lender's assignor immediately before such Foreign Lender became a party hereto or to such Foreign Lender immediately before it changed its Lending Office, (iii) Taxes attributable to such Recipient's failure to comply with **Section 3.01(e)**, and (iv) any withholding Taxes imposed pursuant to FATCA.

"Exempt Deposit Accounts" means (i) Deposit Accounts the balance of which consists exclusively of (A) withheld income taxes and federal, state or local employment taxes in such amounts as are required in the reasonable judgment of Borrowers to be paid to the Internal Revenue Service or state or local government agencies with respect to employees of any of Borrowers, (B) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of one or more Borrowers and (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) taxes accounts, payroll accounts, trust or similar accounts.

"Extraordinary Expenses" means all out-of-pocket costs, expenses, fees or advances that any Lender Party may suffer or incur, whether prior to or after the occurrence of an Event of Default, and whether prior to or during the pendency of the Chapter 11 Case of a Borrower or any other proceeding under any other Debt Relief, including those relating to, on account of or in connection with (i) the audit, inspection, repossession, storage, repair, appraisal, insuring, completion of the manufacture of, preparing for sale, advertising for sale, selling, collecting or otherwise preserving or realizing upon any Collateral; (ii) the defense of Agent's Lien upon any Collateral or the priority thereof or any adverse claim with respect to the Loans, the Credit Documents or the Collateral asserted by any Borrower, any receiver or trustee for any Borrower or any creditor or representative of creditors of any Borrower; (iii) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Borrower, any representative of creditors of any Borrower or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), the Credit Documents, the Obligations, or other Claims; (iv) the settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral (whether or not such Liens are Permitted Liens); (v) the collection or enforcement of any of the Obligations; (vi) any action to enforce any Obligations or Credit

Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, action in a proceeding under any Debt Relief Law of a Borrower, or otherwise); (vii) the negotiation, documentation, and closing of any modification, waiver, workout, restructuring or forbearance agreement with respect to any Credit Document or any Obligations; (viii) amounts advanced by Agent pursuant to of this Agreement; (ix) the enforcement of any of the provisions of any of the Credit Documents; and (x) any payment under a guaranty, indemnity or other payment agreement provided by Agent or (with Agent's consent) any Lender, which is reimbursable to Agent or such Lender by a Borrower pursuant to this Agreement. Such costs, expenses and advances may include transfer fees, field exam fees, taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any or all Borrowers or independent contractors in liquidating any Collateral, travel expenses, all other fees and expenses payable or reimbursable by Borrowers under any of the Credit Documents, and all other fees and expenses associated with the enforcement of rights or remedies under any of the Credit Documents, but excluding compensation paid to employees (including inside legal counsel who are employees) of Agent.

"Facility" means the Revolving Facility, the Letters of Credit, and the respective commitments utilized in making Loans and credit extensions thereunder.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by Agent.

"Fees" means, collectively, the Commitment Fee, the Unused Line Fees, the Letter of Credit Fees, and the L/C Issuer Fees.

"Final DIP Financing Order" means a Final Order of the Bankruptcy Court in substantially the form of the Interim DIP Financing Order (with only such modifications thereto as are necessary to convert the Interim DIP Financing Order to a Final Order and such other modifications as are satisfactory in form and substance to Agent and Required Lenders in their discretion).

"Final Order" means an order or judgment of the Court as entered on its docket that has not been reversed, stayed pursuant to any applicable Bankruptcy Rule or any other applicable rule of civil or appellate procedure, and as to which the time to appeal, petition for certiorari, or seek re-argument or rehearing has expired, or as to which any right to appeal, petition for certiorari or seek re-argument or rehearing has been waived in writing in a manner satisfactory to the parties in interest, or if a notice of appeal, petition for certiorari, or motion for re-argument or rehearing was timely filed, the order or judgment has been affirmed by the highest court to which the order or judgment was appealed or from which the re-argument or rehearing was sought, or a certiorari has been denied, and the time to file any further appeal or to petition for certiorari or to seek further re-argument has expired.

"Financial Officer" of any Person means the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person.

"First Day Orders" mean all orders entered or to be entered by the Court granting the relief requested in the motions filed with the Court on the Petition Date, which shall each be in form and substance reasonably satisfactory to the Agent and Required Lenders.

"Fiscal Period" means a calendar week ending on Friday.

"Foreign Lender" means any Lender or L/C Issuer that is not a U.S. Person.

"Foreign Subsidiary" means any Subsidiary that is incorporated or organized under the Laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (i) with respect to any L/C Issuer, such Defaulting Lender's Revolving Facility Percentage of the outstanding L/C Obligations arising in respect of Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (ii) with respect to the Swing Line Lender, such Defaulting Lender's Revolving Facility Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

"Full Payment" means, with respect to the Obligations or the Pre-Petition Obligations, (a) the full and indefeasible cash payment thereof, including any interest, fees and other charges accruing or incurred prior to or during the pendency of the Chapter 11 Cases or any other proceeding under any Debt Relief Law (whether or not allowed in such proceeding); (b) if any such Pre-Petition Obligations or Obligations are L/C Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral); and (c) the expiration of the Challenge Deadline under (and as defined in) the DIP Financing Orders without any challenge having been timely asserted. No Loans shall be deemed to have been paid in full unless all Commitments related to such Loans have expired or been terminated.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Closing Date. For purposes herein, the term "consolidated" means such Person consolidated with the Subsidiaries and shall not include any Unrestricted Subsidiary, but the interest of such Person in an Unrestricted Subsidiary will be accounted for as an Investment.

"Glencore Credit Agreement" means that certain credit agreement, dated as of December 29, 2012, between Noranda Bauxite Limited, as borrower, and Surela Investments Ltd.

"Governmental Authority" means any federal, state, provincial, territorial, municipal, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

"Guarantee" of or by any Person (the "guarantor") means (i) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or

indirectly, and including any obligation of the guarantor, direct or indirect, (A) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (B) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (C) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (D) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part) or (E) as an account party in respect of any Letter of Credit, bank guarantee or other letter of guaranty issued to support such Indebtedness or other obligation, or (ii) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, the term "Guarantee" shall not include endorsements of instruments for deposit or collection in the Ordinary Course of Business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"guarantor" has the meaning assigned to such term in the definition of the term "Guarantee."

"Hazardous Materials" means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas, of any nature subject to regulation or which can give rise to liability under any Environmental Law.

"Holdings" has the meaning assigned to such term in the preamble to this Agreement.

"Honor Date" has the meaning specified in **Section 2.05(d)(i)**.

"Immaterial Subsidiary" means any Subsidiary that, as of the last day of the fiscal quarter of Borrowers most recently ended, (i) did not have assets with a value in excess of 5.0% of the Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of Borrowers and their Subsidiaries on a consolidated basis as of such date and (ii) when taken together with all other Immaterial Subsidiaries as of such date, did not have assets with a value in excess of 10.0% of the Consolidated Total Assets or revenues representing in excess of 10.0% of total revenues of Borrowers and their Subsidiaries on a consolidated basis as of such date. Each Immaterial Subsidiary as of the Closing Date shall be set forth in Schedule 1.01(c).

"Incremental Availability" means, at any time, the difference of:

(a) the lesser of (i) the Incremental Revolving Facility Commitment overadvance, and (ii) the sum of (A) 5.0% of the Net Amount of Eligible Accounts plus (B) 5.0% of the Orderly Liquidation Value of Eligible Inventory, minus

(b) the aggregate amount of Incremental Revolving Facility Loans outstanding at such time under (and as defined in) the Pre-Petition Credit Agreement and this Agreement,

(it being understood, for the avoidance of doubt, that Incremental Availability is only applicable to Incremental Revolving Facility Loans and not Revolving Facility Loans).

"Incremental Revolving Facility Borrowing" means a Borrowing comprised of Incremental Revolving Facility Loans.

"Incremental Revolving Facility" means the Incremental Revolving Facility Commitments and the Incremental Revolving Facility Loans made hereunder.

"Incremental Revolving Facility Commitment" means \$7,358,491.

"Incremental Revolving Facility Lender" means Bank of America.

"Incremental Revolving Facility Loans" means Revolving Facility Loans made by Incremental Revolving Facility Lender under the Incremental Revolving Facility.

"Indebtedness" of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (iv) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (v) all Capital Lease Obligations of such Person, (vi) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Swap Contracts, (vii) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees, (viii) the principal component of all obligations of such Person in respect of bankers' acceptances, (ix) all Guarantees by such Person of Indebtedness described in clauses (i) through (viii) above and (x) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock); provided, that Indebtedness shall not include (A) trade payables, accrued expenses and intercompany liabilities arising in the Ordinary Course of Business, (B) prepaid or deferred revenue arising in the Ordinary Course of Business, (C) purchase price holdbacks arising in the Ordinary Course of Business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset or (D) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

"Indemnified Taxes" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Borrower under any Credit Document and (ii) to the extent not otherwise described in clause (i) above, Other Taxes.

"Indemnatee" has the meaning assigned to such term in **Section 10.04(b)**.

"Information" has the meaning assigned to such term in **Section 10.07**.

"Intellectual Property Rights" has the meaning assigned to such term in **Section 4.23**.

"Intercompany Accounts" means all obligations and liabilities, however arising, which are due to any Borrower from, which are due from any Borrower to, or which otherwise arise from any transaction by any Borrower with, any Affiliate of such Borrower.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of February 29, 2012, among the Pre-Petition Term Agent, the Pre-Petition Agent, and Borrowers.

"Interest Election Request" means a request by any Borrower to convert or continue a Revolving Facility Borrowing in accordance with **Section 2.07**.

"Interest Expense" means, with respect to any Person for any period, the sum of (i) gross interest expense of such Person and its subsidiaries for such period on a consolidated basis whether paid or accrued, including (A) the amortization of debt discounts, (B) the amortization of all fees (including fees with respect to Swap Contracts) payable in connection with the incurrence of Indebtedness to the extent included in interest expense, commissions, discounts and other fees and charges incurred in respect of letters of credit, (C) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (D) net payments and receipts (if any) pursuant to interest rate Swap Contracts), and (ii) capitalized interest of such Person. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received and costs incurred by Borrowers with respect to interest rate Swap Contracts, and interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by Borrowers to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP.

"Interest Payment Date" means (i) with respect to any Eurodollar Rate Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type and (ii) with respect to any Base Rate Loan, the first Business Day of each month.

"Interest Period" means, as to any Eurodollar Rate Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 30 days thereafter, as Borrowers may elect, or the date any Eurodollar Rate Borrowing is converted to a Base Rate Borrowing in accordance with **Section 2.07** or repaid or prepaid in accordance with **Section 2.09, 2.10 or 2.11**; provided, however, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interim DIP Financing Order" means an interim order of the Court in the form attached to the DIP Financing Motion, with changes to such form as are satisfactory to Agent and Required Lenders in their discretion and as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of Agent and Required Lenders, approving, among other things, the Credit Documents and the Term DIP Credit Documents.

"Interim Period" means the period commencing on the date that the Interim DIP Financing Order is entered by the Court and becomes effective and ending on the sooner to occur of (a) the date that the

Final DIP Financing Order is entered by the Court and becomes effective or (b) the date that is 45 days after the date that the Interim DIP Financing Order is entered by the Court.

"Inventory" has the meaning assigned to such term in the Collateral Agreement.

"Investment" has the meaning assigned to such term in **Section 7.04**.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the applicable L/C Issuer and any Borrower or in favor of the L/C Issuer and relating to such Letter of Credit.

"Joint Lead Arrangers" means Bank of America, U.S. Bank National Association, Siemens Financial Services, Inc., Wells Fargo Bank, N.A., UBS Securities LLC, and Citigroup Global Markets Inc., in their capacities as joint lead arrangers.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Revolving Facility Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Facility Borrowing.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means (i) Bank of America in its capacity as issuer of Letters of Credit under **Section 2.05(b)** and its successor or successors in such capacity, (ii) each Lender listed in Schedule 2.05 as the issuer of an Existing Letter of Credit, and (iii) any other Lender (excluding Citibank, N.A.) which a Borrower shall have designated (with such Lender's consent) as an "L/C Issuer" by notice to Agent (including any Lender designated as such as a replacement for any L/C Issuer who is at the time of such appointment a Defaulting Lender) that is reasonably acceptable to Agent.

"L/C Issuer Fees" has the meaning specified in **Section 2.05(j)**.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.04**. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but

any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lending Office" means with respect to any Lender and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in such Lender's Administrative Questionnaire or in any applicable Assignment and Acceptance pursuant to which such Lender became any Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to Agent and Borrowers as the office by which its Loans of such Type are to be made and maintained.

"Lender" means each financial institution listed on Schedule 2.01 (other than any such Person that ceases to be a party hereto pursuant to an Assignment and Acceptance in accordance with **Section 10.06**), as well as any Person that becomes an "Lender" hereunder pursuant to **Section 10.06**; and shall include, as the context may require, Revolving Facility Lenders, Swing Line Lender, and Incremental Revolving Facility Lender in such capacities.

"Lender Parties" mean Lenders, Agent, and L/C Issuers.

"Letter of Credit" means any letter of credit or bank guarantee issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit, which shall be deemed to have been issued hereunder. A Letter of Credit may be a commercial letter of credit (including a trade letter of credit or bank guarantee in support of trade obligations of any Borrower) or a standby letter of credit or bank guarantee. All letters of credit outstanding on the Petition Date and issued pursuant to the Pre-Petition Credit Agreement shall be deemed issued hereunder.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is 7 days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in **Section 2.05(i)**.

"Letter of Credit Sublimit" means an amount equal to \$50,000,000; provided that the aggregate amount of the Letters of Credit outstanding under the Facility (which is inclusive of the Existing Letters of Credit) shall not exceed on any date the Letter of Credit Sublimit. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

"Liquidity" has the meaning specified in **Section 7.22**.

"Lien" means, with respect to any asset, (i) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset or (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, provided, that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

"Loans" mean the Revolving Facility Loans, the Swing Line Loans, the Incremental Revolving Facility Loans, and Agent Advances.

"Local Court Rules" mean the rules of procedure adopted by the Court, as such rules may be modified or amended from time to time.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Management Group" means the group consisting of the directors, executive officers and other key management personnel of each Borrower and its Subsidiaries, as the case may be, on the Closing Date together with (i) any new directors whose election by such boards of directors or whose nomination for election by the shareholders of each Borrower was approved by a vote of a majority of the directors of such Borrower then still in office who were either directors on the Closing Date or whose election or nomination was previously so approved and (ii) executive officers and other key management personnel of each Borrower and its Subsidiaries hired at a time when the directors on the Closing Date together with the directors so approved constituted a majority of the directors of such Borrower.

"Margin Stock" has the meaning assigned to such term in Regulation U.

"Material Adverse Effect" means a material adverse effect on the business, property, operations or condition of a Borrower and its Subsidiaries, taken as a whole, or the validity or enforceability of any of the material Credit Documents or the rights and remedies of Agent and Lenders thereunder, other than as a direct result of the commencement of the Chapter 11 Cases and the continuation and prosecution thereof.

"Material Contract" means an agreement to which a Borrower is a party (other than the Credit Documents) (i) which is deemed to be a material contract as provided in Regulation S-K promulgated by the SEC under the Securities Act of 1933 or (ii) for which breach, termination, cancellation, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect, in each case excluding any contract that is rejected, with the prior written consent of Agent, by a Borrower in accordance with an order entered by the Court under Section 365 of the Bankruptcy Code.

"Material Indebtedness" means Indebtedness (other than Loans) of any Borrower in an aggregate principal amount exceeding \$5,000,000.

"Material Subsidiary" means any Subsidiary other than an Immaterial Subsidiary.

"Maturity Date" means November __, 2016 [9 months from Closing Date].

"Maximum Rate" has the meaning assigned to such term in **Section 10.10**.

"Minimum Collateral Amount" means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of an L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of **Section 2.16(a)(i), (a)(ii) or (a)(iii)**, an amount equal to 105% of the Outstanding Amount of all L/C Obligations, and (iii) otherwise, an amount determined by Agent and the applicable L/C Issuer in their discretion.

"Moody's" means Moody's Investors Service, Inc. and its successors.

"Mortgaged Properties" means the Real Properties owned in fee by Borrowers that are set forth on Schedule 1.01(b) and each additional Real Property encumbered by a Mortgage pursuant to **Section 6.10**.

"Mortgages" means, collectively, the mortgages, trust deeds, deeds of trust, deeds to secure debt, assignments of leases and rents, and other security documents delivered with respect to Mortgaged Properties, each substantially in the form of Exhibit D attached to the Pre-Petition Credit Agreement (with such changes as are reasonably consented to by Agent to account for local law matters), as amended, supplemented or otherwise modified from time to time.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Borrower, Holdings or any Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding 6 plan years made or accrued an obligation to make contributions.

"Net Amount of Eligible Accounts" means, at any time, the gross amount of Eligible Accounts less sales, excise, or similar taxes, and less returns, discounts, Claims, credits, and allowances of any nature at any time issued, owing, granted, outstanding, available, or claimed (in each case without duplication, whether of the exclusionary criteria set forth in the definition of Eligible Accounts, of any Reserve, or otherwise).

"Non-Consenting Lender" means any Lender that does not consent to a proposed amendment, waiver, consent, release, discharge or termination with respect to any Credit Document that, pursuant to the terms of **Section 10.01**, requires the consent of each Lender (or each affected Lender) and that has been approved by Required Lenders.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Extension Notice Date" has the meaning specified in **Section 2.05(c)(iii)**.

"Non-Ordinary Course Proceeds" means, on any date, an amount equal to all proceeds received by Agent or Pre-Petition Agent from one or more 363 Sales outside the Ordinary Course of Business of a Borrower of ABL Priority Collateral, whether or not any Accounts or Inventory included in any such sale constituted Eligible Accounts or Eligible Inventory at the time of such sale and irrespective of whether any of such proceeds are applied to the Obligations or the Pre-Petition Obligations.

"Non-Ordinary Course Proceeds Reserve" means, on any date, a Reserve equal to the sum of (i) the amount by which the portion of Non-Ordinary Course Proceeds allocated to Accounts and Inventory (whether or not Eligible Accounts or Eligible Inventory) that are included in any 363 Sale (as such allocation is set forth in the DIP Financing Order then in effect or as otherwise agreed to in writing by Lender Parties and Term DIP Parties) exceeds the Borrowing Base Value of those Accounts that are Eligible Accounts and Inventory that is Eligible Inventory **plus** (ii) amounts paid under any insurance policy in respect of ABL Priority Collateral, **plus** (iii) any tax refunds that constitute ABL Priority Collateral, including any state or federal income tax refunds, **plus** (iv) all proceeds received from any sale or other disposition of ABL Priority Collateral outside the Ordinary Course of Business that does not consist of Accounts or Inventory. As used herein, the term "Borrowing Base Value" means, with respect to any Accounts or Inventory included in a 363 Sale, the sum of the amount by which such Accounts that are Eligible Accounts and such Inventory that is Eligible Inventory contributed to the Borrowing Base as of the date of the closing of such 363 Sale.

"Non-Reinstatement Deadline" has the meaning specified in **Section 2.05(c)(iv)**.

"Note" has the meaning assigned to such term in **Section 2.09(e)**.

"Obligations" means, with respect to each Borrower, without duplication and whether evidenced by any note or other writing, whether allowed in any of the Chapter 11 Cases or any other proceeding under a Debt Relief Law, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several, chargeable to any or all Borrowers under this Agreement or under any of the other Credit Documents:

(i) in the case of a Borrower, all principal of, premium, if any, and interest (including, without limitation, any interest which accrues after the commencement of the Chapter 11 Cases or any other proceeding under any Debt Relief Laws with respect to such Borrower) on, any Loan or L/C Obligation under, or any Note issued pursuant to, this Agreement or any other Credit Document;

(ii) all fees, expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Borrower (including any amounts which accrue after the commencement of the Chapter 11 Cases or any other proceeding under any Debt Relief Laws with respect to such Borrower) pursuant to this Agreement or any other Credit Document;

(iii) all expenses of Agent as to which one or more of Agent have a right to reimbursement by such Borrower under **Section 10.04(a)** of this Agreement or under any other similar provision of any other Credit Document, including any and all sums advanced by Agent to preserve the Collateral or preserve its security interests in the Collateral to the extent permitted under any Credit Document or applicable Laws;

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement by such Borrower under **Section 10.04(b)** of this Agreement or under any other similar provision of any other Credit Document; and

(v) Cash Management Obligations.

together in each case with all renewals, modifications, consolidations or extensions thereof.

"Orderly Liquidation Value" means an amount equal to the most recently determined Orderly Liquidation Value Factor multiplied by the book value of all Eligible Inventory of Borrowers.

"Orderly Liquidation Value Factor" means, with respect to Eligible Inventory of Borrowers, the net orderly liquidation value thereof (expressed as a percentage of book value) as determined by an Acceptable Appraiser in accordance with **Section 6.12**.

"Ordinary Course of Business" means, with respect to any transaction involving any Person, the ordinary course of such Person's business, as conducted by such Person in accordance with past practices and undertaken by such Person in good faith and not for the purpose of evading any covenant or restriction any Credit Document or under applicable Laws.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of such Recipient engaging or having engaged in a trade or business in the jurisdiction imposing such Tax or any other present or former connection between such Recipient and such jurisdiction; provided that no such Recipient shall be deemed to be engaged in a trade or business in, or to have any other connection

with, any jurisdiction solely as a result of such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document pursuant to an assignment request by a Borrower under **Section 10.14**.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 3.06**). Other Taxes shall not include any Taxes imposed on, or measured by reference to, gross income, net income or gain.

"Out-of-Formula Condition" means a condition on any date whereby the sum of the Revolving Facility Credit Exposure on such date and the amount of the Pre-Petition Obligations on such date exceeds the Borrowing Base on such date.

"Outstanding Amount" means (i) with respect to Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Facility Loans and Swing Line Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by any Borrower of Unreimbursed Amounts or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"Parent Entity" means any direct or indirect parent of Holdings.

"Participant" has the meaning assigned to such term in **Section 10.06(d)**.

"Participant Register" has the meaning assigned to such term in **Section 10.06(d)**.

"Payment Items" means all checks, drafts, or other items of payment payable to a Borrower, including those constituting proceeds of any of the Collateral.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Perfection Certificate" means the Perfection Certificate with respect to Borrowers dated on or about the Closing Date.

"Permitted Holder" means the Management Group.

"Permitted Investments" means:

(i) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case with maturities not exceeding two years;

(ii) bank deposits, checking accounts, time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America, having capital, surplus and undivided profits in excess of \$250,000,000 and whose long term debt, or whose parent holding company's long term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(iii) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (i) above entered into with a bank meeting the qualifications described in clause (ii) above;

(iv) commercial paper, maturing not more than 1 year after the date of acquisition, issued by a corporation (other than an Affiliate of the Borrower) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P 1 (or higher) according to Moody's, or A 1 (or higher) according to S&P;

(v) securities with maturities of 2 years or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's;

(vi) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (i) through (v) above;

(vii) money market funds that (A) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (B) are rated AAA by S&P and Aaa by Moody's and (C) have portfolio assets of at least \$5,000,000,000;

(viii) time deposit accounts, certificates of deposit and money market deposits (in each case with or from a bank meeting the qualifications described in clause (ii) above) in an aggregate face amount not in excess of 0.50% of the total assets of Borrowers and their Subsidiaries, on a consolidated basis, as of the end of Borrowers' most recently completed fiscal year; and

(ix) instruments equivalent to those referred to in clauses (i) through (viii) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.

"Permitted Liens" has the meaning assigned to such term in **Section 7.02**.

"Permitted Variance" means (a) actual Operating Disbursements, Payroll Disbursements, CAPEX Disbursements and Other Disbursements (each as referenced in the DIP Budget) of Borrowers to be more than the weekly budgeted and the rolling one-week cumulative budgeted Operating Disbursements, Payroll Disbursements, CAPEX Disbursements and Other Disbursements, as set forth in the Budget by more than the greater of (i) \$100,000 or (ii) 15% for each one-week and rolling one-week cumulative period beginning with the first full one-week period ending February 12, 2016; (b) actual Operating Sales

(as referenced in the DIP Budget) of Borrowers to be more than the weekly budgeted and the rolling one-week cumulative budgeted Operating Sales, as set forth in the DIP Budget by more than 10% for each one-week and rolling one-week cumulative period beginning with the first full one-week period ending February 12, 2016; or (c) actual Operating Cash Flow and Net Cash Flow (each as referenced in the DIP Budget) of Borrowers to be more than the weekly budgeted and the rolling one-week cumulative budgeted Operating Cash Flow and Net Cash Flow, as set forth in the DIP Budget by the greater of (i) \$100,000 or (ii) more than 20% for each one-week and rolling one-week cumulative period beginning with the first full one-week period ending February 12, 2016.

"Person" means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

"Petition Date" has the meaning ascribed to such term in the second paragraph of the recitals to this Agreement.

"Plan" shall mean any employee pension benefit plan, as such term is defined in Section 3(2) of ERISA (other than a Multiemployer Plan) (i) subject to the provisions of Title IV of ERISA, (ii) sponsored or maintained (at the time of determination or at any time within the 5 years prior thereto) by any Borrower or any ERISA Affiliate, or (iii) in respect of which Holdings, any Borrower, any Subsidiary or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform" has the meaning assigned to such term in **Section 10.08**.

"Pledged Collateral" has the meaning assigned to such term in the Collateral Agreement.

"Post-Petition" means any date or time after the date and time of the commencement of the Chapter 11 Cases.

"Pre-Petition" means any date or time prior to the date and time of the commencement of the Chapter 11 Cases.

"Pre-Petition Agent" has the meaning assigned to such term in the preamble to this Agreement.

"Pre-Petition Collateral" means the "Collateral" as such term is defined by the Pre-Petition Credit Agreement, to the extent such collateral was in existence on the Petition Date, and all proceeds thereof.

"Pre-Petition Collateral Agreement" means the "Collateral Agreement" as defined in the Pre-Petition Credit Agreement, as at any time amended, modified, restated or supplemented.

"Pre-Petition Credit Agreement" has the meaning assigned to such term in the preamble to this Agreement.

"Pre-Petition Credit Documents" means the "Loan Documents" as such term is defined in the Pre-Petition Credit Agreement.

"Pre-Petition Lender" has the meaning assigned to such term in the first recital hereof.

"Pre-Petition Obligations" means the "ABL Finance Obligations" as such term is defined in the Pre-Petition Credit Agreement.

"Pre-Petition Obligations Reserve" means, on any date, a reserve in an amount equal to the aggregate of all Pre-Petition Obligations outstanding on such date (other than Incremental Revolving Facility Loans outstanding under (and as defined in) the Pre-Petition Credit Agreement).

"Pre-Petition Secured Parties" means the "Secured Parties" as defined in the Pre-Petition Credit Agreement.

"Pre-Petition Term Loan Agent" means Bank of America, N.A., in its capacity as administrative and Agent, together with its successors and assigns in such capacity, for certain financial institutions party thereto from time to time in their capacities as lenders under the Pre-Petition Term Loan Agreement.

"Pre-Petition Term Loan Agreement" means that certain Credit Agreement dated as of February 29, 2012, among the Pre-Petition Term Loan Agent, the financial institutions party thereto from time to time in their capacities as lenders, and certain Borrowers.

"Pre-Petition Term Loan Documents" mean "Loan Documents" as defined in the Pre-Petition Term Loan Agreement.

"Pre-Petition Term Loan Obligations" means "Term Credit Obligations" as defined in the Pre-Petition Term Loan Agreement.

"Primary Payment Account" has the meaning ascribed to it in **Section 6.13**.

"Prime Rate" means, for any day, the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate." The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Pro Rata Share" means, with respect to any Lender, a fraction (expressed as a percentage), the numerator of which is the amount of such Lender's Revolving Facility Commitment and the denominator of which is the sum of the amounts of all of Lenders' Revolving Facility Commitments, or if no Commitments are outstanding, a fraction (expressed as a percentage), the numerator of which is the principal amount of Obligations owed to such Lender and the denominator of which is the aggregate principal amount of the Obligations owed to Lenders, in each case giving effect to any Lender's participation in Letters of Credit, Swing Line Loans and Agent Advances. Notwithstanding the foregoing, when the term "Pro Rata Share" is used herein in connection with any Lender's share of Revolving Facility Loans, the reference to Revolving Facility Loans shall exclude any Incremental Revolving Facility Loans.

"Professional Fees" means the fees and reimbursable expenses of Professional Persons.

"Professional Person" means a Person who is an attorney, financial advisor, accountant, appraiser, auctioneer or other professional person and who is retained, with Court approval, by (a) a Borrower pursuant to Section 327 of the Bankruptcy Code or (b) a Committee pursuant to Section 1103(a) of the Bankruptcy Code.

"Public Lender" has the meaning assigned to such term in **Section 10.08**.

"Real Property" means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Borrower, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

"Reasonable Credit Judgment" means reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions and as it relates to the establishment of Reserves or the adjustment or imposition of exclusionary criteria shall require that, (i) such establishment, adjustment or imposition after the Closing Date be based on the analysis of facts or events first occurring or first discovered by Agent after the Closing Date or that are materially different from facts or events occurring or known to Agent on the Closing Date, (ii) the contributing factors to the imposition of any Reserve shall not duplicate (A) the exclusionary criteria set forth in definitions of "Eligible Accounts" and "Eligible Inventory", as applicable (and vice versa) or (B) any reserves deducted in computing book value, and (iii) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

"Recipient" means Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder.

"Refinance" has the meaning assigned to such term in the definition of the term "Permitted Refinancing Indebtedness," and "Refinanced" has a meaning correlative thereto.

"Register" has the meaning assigned to such term in **Section 10.06(c)**.

"Regulation U" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Related Fund" means, with respect to any Lender that is a fund that invests in bank or commercial loans and similar extensions of credit, any other fund that invests in bank or commercial loans and similar extensions of credit and is advised or managed by (i) such Lender, (ii) an Affiliate of such Lender or (iii) an entity (or an Affiliate of such entity) that administers, advises or manages such Lender.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agent, attorneys, consultants and advisors of such Person and such Person's Affiliates.

"Release" means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment.

"Remaining Present Value" means, as of any date with respect to any lease, the present value as of such date of the scheduled future lease payments with respect to such lease, determined with a discount rate equal to a market rate of interest for such lease reasonably determined at the time such lease was entered into.

"Report" has the meaning assigned to such term in **Section 10.22**.

"Reportable Event" means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

"Required Lenders" means, at any time, Lenders having (i) Loans (other than Swing Line Loans) outstanding, (ii) L/C Obligations outstanding (with the aggregate amount of each Lender's risk participation and funded participation in funded L/C Obligations being deemed "held" by such Lender), (iii) Swing Line Loans outstanding (with the aggregate amount of each Lender's risk participation and funded participation in funded Swing Line Loans being deemed "held" by such Lender), and (iv) Revolving Facility Commitments, that taken together, represent more than 50% of the sum of all (A) Loans (other than Swing Line Loans) outstanding, (B) L/C Obligations outstanding, (C) Swing Line Loans outstanding, and (D) Revolving Facility Commitments at such time. The Loans of any Defaulting Lender and its Affiliates shall be disregarded in determining Required Lenders at any time.

"Reserves" means, on any date, the sum of the following on such date (and "Reserve" means any of the following): the Carve-Out Reserve; the Pre-Petition Obligations Reserve; the Non-Ordinary Course Proceeds Reserve; the Rod Mill Reserve, a reserve for amounts any Lender Party may be called upon to pay for the account of any Borrower; and such additional reserves against the Borrowing Base that Agent may, in the exercise of its Reasonable Credit Judgment, establish from time to time upon at least 2 Business Days' notice to Borrowers. Agent acknowledges that, as of the Closing Date, except with respect to rent reserves contemplated by clause (b) or (i) of the definition of Eligible Inventory, it does not know of any circumstance or condition with respect to the Accounts, Inventory or Borrowing Base that would require the imposition of a Reserve which has not been imposed as of the Closing Date.

"Responsible Officer" of any Person means any executive officer or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"Restricted Payments" has the meaning assigned to such term in **Section 7.07**.

"Revolving Facility" means the Revolving Facility Commitments (including the Incremental Revolving Facility Commitment) and the extensions of credit made hereunder by Lenders.

"Revolving Facility Borrowing" means a Borrowing comprised of Revolving Facility Loans.

"Revolving Facility Commitment" means, with respect to each Lender, the commitment of such Revolving Facility Lender to make Loans pursuant to **Section 2.01**, expressed as an amount representing the maximum aggregate permitted amount of such Revolving Facility Lender's Revolving Facility Credit Exposure hereunder, as such commitment may be (i) reduced from time to time pursuant to **Section 2.08**, and (ii) reduced or increased from time to time pursuant to assignments by or to such Lender under **Section 10.06**. The initial amount of each Lender's Revolving Facility Commitment (including in the case of Incremental Revolving Facility Lender, the Incremental Revolving Facility Commitment) is set forth on Schedule 2.01. The aggregate amount of Lenders' Revolving Facility Commitment on the Closing date is \$130,000,000; provided that such amount shall be reduced dollar for dollar by the amount of Non-Ordinary Course Proceeds received by Agent or Pre-Petition Agent and applied to the Obligations or the Pre-Petition Obligations, with each Lender's Revolving Facility Commitment reduced proportionately thereby.

"Revolving Facility Credit Exposure" means, at any time, the sum of (a) the aggregate principal amount of the Loans outstanding at such time, the aggregate principal amount of the Swing Line Loans, Revolving Facility Loans, and Incremental Revolving Facility Loans outstanding at such time and (b) the aggregate principal amount of L/C Obligations outstanding at such time. The Revolving Facility Credit Exposure of any Revolving Facility Lender at any time shall be the product of (x) such Revolving Facility Lender's Revolving Facility Percentage and (y) the aggregate Revolving Facility Credit Exposure of all Revolving Facility Lenders, collectively, at such time.

"Revolving Facility Lender" means any Lender (including an Incremental Revolving Facility Lender) with a Revolving Facility Commitment or with outstanding Revolving Facility Loans.

"Revolving Facility Loan" means a Loan made by a Revolving Facility Lender pursuant to **Section 2.01**.

"Revolving Facility Percentage" means, with respect to any Revolving Facility Lender, the percentage of the total Revolving Facility Commitments represented by such Revolving Facility Lender's Revolving Facility Commitment, subject to adjustment as provided in **Section 2.17**. If the Revolving Facility Commitments have terminated or expired, the Revolving Facility Percentages shall be determined based upon the Revolving Facility Commitments most recently in effect, giving effect to any subsequent assignments pursuant to **Section 10.06**.

"Rod Mill Reserve" means, on any date, a reserve equal to the approximate amount of the Indebtedness estimated by Noranda Aluminum to be owed by it to the Missouri Department of Economic Development, Jefferson County, Missouri and/or New Madrid County, Missouri (which estimated amount is \$850,000) and secured (or potentially secured) by one or more Liens on certain Collateral owned by Noranda Aluminum, including potentially certain ABL Priority Collateral; provided that such reserve shall be released if and when (i) each of the holders of such Liens agrees, in a writing in form and substance satisfactory to Agent and Required Lenders, to release such Liens on ABL Priority Collateral or subordinate their priority to and in favor of Secured Parties or (ii) in the Final DIP Financing Order the Court specifically grants priority Liens in favor of Secured Parties that prime each such holder's Liens pursuant to Section 364(d) of the Bankruptcy Code. If the conditions in clauses (i) or (ii) above for the release of the reserve have not been satisfied by the time of the entry of the Final DIP Financing Order, then the amount of the reserve may be increased or decreased based upon Agent's determination of the maximum amount of such Indebtedness that may be owed by Noranda Aluminum (including, to the extent applicable, accrued interest); and, in making such determination, Agent may consider all documentation related to such Indebtedness and any proof of claim filed in respect of such Indebtedness.

"Sanctioned Entity" means (a) an agency of the government of, (b) an organization directly or indirectly controlled by, or (c) a Person resident in, a country that is subject to a sanctions program identified on the list maintained and published by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs>, or as otherwise published from time to time as such program may be applicable to such agency, organization or Person.

"Sanctioned Person" means a Person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>, or as otherwise published from time to time.

"S&P" means Standard & Poor's Ratings Group, Inc. and any successor thereto.

"SEC" means the Securities and Exchange Commission or any successor thereto.

"Secured Parties" means the "Secured Parties" as defined in the Collateral Agreement.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Documents" means the Mortgages, the Collateral Agreement, any Deposit Account Control Agreement, the DIP Financing Orders, and each of the security agreements and other instruments and documents executed and delivered at any time pursuant to any of the foregoing or pursuant to any other provision of this Agreement.

"Senior Note Document" means the Senior Notes and the Senior Notes Indenture.

"Senior Notes" means the Company's floating rate senior notes due 2015, issued pursuant to the Senior Notes Indenture and outstanding on the Closing Date.

"Senior Notes Indenture" means the Indenture dated as of May 18, 2007, under which the Senior Notes were issued, among the Company and certain of its Subsidiaries party thereto and the trustee named therein from time to time, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

"Sherwin" means Sherwin Alumina Company, LLC.

"Sherwin Contract" means that certain Bauxite Sales Agreement dated as of December 29, 2012, between Noranda Bauxite Limited and Sherwin.

"Sherwin Settlement" means a settlement agreement, in form and substance acceptable to Agent, between Noranda Bauxite Limited and Sherwin and regarding the Sherwin Contract and any and all Claims between Sherwin and Noranda Bauxite Limited and any Borrowers, including any Claims arising from or relating to the Glencore Credit Agreement.

"Subsidiary" means, with respect to any Person (herein referred to as the "parent"), any corporation, partnership, association or other business entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held, or (ii) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Superpriority Claim" means a Claim against a Borrower in any of the Chapter 11 Cases which is an administrative expense Claim having priority and right to payment over all other administrative expenses and unsecured Claims against such Borrower of any kind or nature, whether now existing or hereafter arising, including all administrative expenses of the kind specified in or arising or ordered under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code.

"Swap Contract" means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the

foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement provided, that (i) no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings, any Borrower or any of their Subsidiaries, and (ii) no contract for the purchase of natural gas of which any Borrower intends to take delivery from a counterparty in the business of supplying natural gas, shall be a Swap Contract.

"Swap Obligations" of any Person means all obligations (including any amounts which accrue after the commencement of the Chapter 11 Cases or any other proceeding with respect to such Person under any Debtor Relief Law, whether or not allowed or allowable as a claim under any such proceeding) of such Person in respect of any Swap Contract.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (i) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to **Section 2.04**.

"Swing Line Lender" means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in **Section 2.04(a)**.

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to **Section 2.04(b)**, which, if in writing, shall be substantially in the form of Exhibit C-2 attached hereto.

"Swing Line Sublimit" means, at any time, an amount equal to \$10,000,000; provided that the principal amount of Swing Line Loans outstanding under the Facility and the principal amount of Swing Line Loans outstanding under (and as defined in) the Pre-Petition Credit Agreement shall not exceed at any time the Swing Line Sublimit. The Swing Line Sublimit is part of, and not in addition to, the Revolving Facility.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term DIP Agent" means "Administrative Agent" and "Collateral Agent" under the Term DIP Credit Agreement and their successors in such capacity.

"Term DIP Borrowers" means each "Borrower" as defined in the Term DIP Credit Agreement.

"Term DIP Credit Agreement" means the Debtor-in-Possession Term Loan Credit Agreement dated or to be dated on or about the date hereof, among Borrowers, the lending institutions party thereto from time to time, the Term DIP Agent and any other parties named therein, as at any time amended, modified, supplemented or restated.

"Term DIP Credit Documents" has the meaning ascribed to the term "Loan Documents" in the Term DIP Credit Agreement.

"Term DIP Obligations" means "Finance Obligations" as defined in the Term DIP Credit Agreement.

"Term DIP Lenders" means each "Lender" as defined in the Term DIP Credit Agreement and its successors and assigns.

"Term DIP Loans" means "Loans" as defined in the Term DIP Credit Agreement.

"Term DIP Parties" means Term DIP Agent and Term DIP Lenders.

"Term Priority Collateral" means "Term Priority Collateral" as defined in the Intercreditor Agreement.

"Transaction Documents" means, collectively, the Credit Documents, the Term DIP Credit Documents, and any other agreements, instruments, or other documents executed in connection therewith or otherwise in connection with the Transactions.

"Transactions" means, collectively, (i) the execution and delivery of the Credit Documents, the creation of the Liens pursuant to the Security Documents, and any initial borrowings under this Agreement; (ii) the issuance of any new Letters of Credit hereunder on or about the Closing Date; (iii) the payment of the fees and expenses incurred by Agent and Lenders in connection with negotiating and documenting the Facility, seeking and obtaining Court approval of the Facility, preparing for the closing on the Facility, and consummating the foregoing; (iv) the execution and delivery of the Term DIP Credit Documents, the creation of the Liens pursuant to the terms thereof, and any initial borrowings thereunder; and (v) the payment of all other fees and expenses to be paid on or prior to the Closing Date and owing in connection with any of the foregoing.

"Type" means, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall include the Adjusted Eurodollar Rate and the Base Rate.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("ICC") Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"Unreimbursed Amount" has the meaning specified in **Section 2.05(d)(i)**.

"Unrestricted Cash" means domestic cash or cash equivalents of Borrowers that would not appear as "restricted" on a consolidated balance sheet of Borrowers or any of their Subsidiaries.

"Upstream Sale Process" means the implementation of bidding and sale procedures in respect of all of Borrowers' assets and property that comprise the "Upstream Business," approved by an order of the Court, in form and substance reasonably acceptable to Agent in all respects.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning specified in **Section 3.01(c)(ii)(B)(3)**.

"Wholly Owned Domestic Subsidiary" of any Person means a Subsidiary of such Person that is both a Domestic Subsidiary and a Wholly Owned Subsidiary.

"Wholly Owned Foreign Subsidiary" of any Person means a Subsidiary of such Person that is both a Foreign Subsidiary and a Wholly Owned Subsidiary.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.02. Terms Generally. The definitions set forth or referred to in **Section 1.01** shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The terms "herein," "hereof" and "hereunder" and other words of similar import refer to the Agreement as a whole and not to any particular section, paragraph or subdivision. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding." The section titles, table of contents and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of the Agreement. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; to any of the Credit Documents, Pre-Petition Credit Documents, or Pre-Petition Term Loan Documents shall include any and all amendments or modifications thereto and any and all restatements, extensions, supplements or renewals thereof; to any Person shall mean and include the successors and permitted assigns of such Person; to "including" and "include" shall be understood to mean "including, without limitation" (and, for purposes of this Agreement and each other Credit Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters to matters similar to the matters specifically mentioned); or to the time of day shall mean the time of day on the day in question in New York, New York, unless otherwise expressly provided in the Agreement. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, that, if Borrowers notify Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Agent notifies Borrowers

that Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing by Agent pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by Required Lenders. The discretion of Agent or any Lender means the sole and absolute discretion of such Person. Calculations used in preparing Borrowing Base Certificates hereunder shall be consistent with the methods of valuation and calculation employed in determining the Borrowing Base under (and as defined in) the Pre-Petition Credit Agreement. Borrowers shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by any Agent or any Lender under any Credit Document. No provision of any Credit Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision.

Section 1.03. Effectuation of Transactions. Each of the representations and warranties of Borrowers contained in this Agreement (and all corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.04. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar stated amount of such Letter of Credit at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II THE CREDITS

Section 2.01. Revolving Facility Commitments. Subject to the terms and conditions set forth herein, each Revolving Facility Lender severally agrees to make Revolving Facility Loans to Borrowers from time to time on any Business Day during the Availability Period in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender's Revolving Facility Commitment; provided, however, that after giving effect to any Revolving Facility Borrowing, (i) the Revolving Facility Credit Exposure shall not exceed the Revolving Facility Commitments, (ii) the Revolving Facility Credit Exposure of any Revolving Facility Lender shall not exceed such Lender's Revolving Facility Commitment, and (iii) the Revolving Facility Credit Exposure shall not exceed the Borrowing Base. Within the limits of each Lender's Revolving Facility Commitment, and subject to the other terms and conditions hereof, Borrowers may borrow under this **Section 2.01**, repay under **Sections 2.10** and **2.11** and re-borrow under this **Section 2.01**. Revolving Facility Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

Section 2.02. Loans and Borrowings. Each Loan shall be made as part of a Borrowing consisting of Loans under the same Facility and of the same Type made by Lenders ratably in accordance with their respective Commitments under the applicable Facility (or in the case of Swing Line Loans, in accordance with their respective Swing Line Commitment, and in the case of Incremental Revolving Facility Loans, in accordance with the Incremental Revolving Facility Commitment); provided, however, that Revolving Facility Loans shall be made by the Revolving Facility Lenders ratably in accordance with

their respective Revolving Facility Percentages on the date such Loans are made hereunder. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided, that the Commitments of Lenders are several, and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(a) Subject to **Section 3.03**, each Borrowing shall be comprised entirely of Base Rate Loans or Eurodollar Rate Loans as Borrowers may request in accordance herewith. Each Swing Line Borrowing shall be a Base Rate Borrowing. Each Lender at its option may make any Base Rate Loan or Eurodollar Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided, that any exercise of such option shall not affect the obligation of Borrowers to repay such Loan in accordance with the terms of this Agreement, and such Lender shall not be entitled to any amounts payable under **Section 3.01 or 3.04** solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(b) At the commencement of each Interest Period for any Eurodollar Rate Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. At the time that each Base Rate Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided, that a Base Rate Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Revolving Facility Commitments or that is required to finance the reimbursement in respect of Letters of Credit as contemplated by **Section 2.05(c)**. Each Swing Line Borrowing shall be in an amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type and under more than one Facility may be outstanding at the same time; provided that there shall not at any time be more than a total of five (5) Eurodollar Rate Borrowings outstanding under the Revolving Facility.

(c) Notwithstanding any other provision of this Agreement, Borrowers shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date.

Section 2.03. Requests for Borrowings. To request a Revolving Facility Borrowing, Borrowers shall notify Agent of such request by telephone (a) in the case of a Eurodollar Rate Borrowing, not later than 12:00 p.m., 3 Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 12:00 p.m., before the date of the proposed Borrowing; provided, that any such notice of a Base Rate Borrowing to finance the reimbursement in respect of a Letter of Credit as contemplated by **Section 2.05(c)** may be given not later than 10:00 a.m., on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to Agent of a written Borrowing Request in a form approved by Agent and signed by any Borrowers. Each such telephonic and written Borrowing Request shall specify the following information in compliance with **Section 2.02**:

(i) whether such Borrowing is to be a Borrowing of Revolving Facility Loans or Incremental Revolving Facility Loans;

(ii) the aggregate amount of (A) the requested Borrowing and (B) all Revolving Facility Loans to be outstanding (after giving effect to the requested Borrowing);

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be a Base Rate Borrowing or a Eurodollar Rate Borrowing;

(v) in the case of a Eurodollar Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period; and

(vi) the location and number of the Borrower's account to which funds are to be disbursed.

If Borrowers fail to specify a Type of Revolving Facility Loan in a Borrowing Request or if Borrowers fail to give a timely notice requesting a conversion or continuation, then the Revolving Facility Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. Promptly following receipt of a Borrowing Request in accordance with this Section, Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Unless payment is otherwise timely made by Borrowers, the becoming due of any amount required to be paid under this Agreement or any of the other Credit Documents with respect to any Obligations (whether as principal, accrued interest, fees or other charges, including Extraordinary Expenses, Cash Management Obligations, and the repayment of any L/C Obligations) shall be deemed irrevocably to be a request (without any requirement for the submission of a Borrowing Request) for a Revolving Facility Loan on the due date of, and in an aggregate amount required to pay, such obligations, and the proceeds of such Revolving Facility Loans may be disbursed by way of direct payment of the relevant obligation and shall bear interest as a Revolving Facility Loan. No Lender Party shall have any obligation to any Borrower to honor any deemed request for a Revolving Facility Loan after the Commitment Termination Date, when an Out-of-Formula Condition exists or would result therefrom, or when any condition precedent set forth in **Section 5.01** or **5.02** hereof is not satisfied, but may do so in their discretion and without regard to the existence of, and without being deemed to have waived, any Default or Event of Default and regardless of whether such Revolving Facility Loan is funded after the Commitment Termination Date. Lenders may fund Professional Fees under the Carve-Out as provided in the DIP Financing Orders, and all such fundings, if made, shall constitute Revolving Facility Loans regardless of whether such financings were made at the request of any Borrower, the Commitment Termination Date has occurred or any condition precedent under Article V is unsatisfied (but without waiving any such conditions). In addition, Agent may, at its option, charge such obligations against any operating, investment or other account of a Borrower maintained with Agent or any of its Affiliates.

Section 2.04. Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this **Section 2.04**, may make loans (each such loan, a "Swing Line Loan") to Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Revolving Facility Percentage of the Outstanding Amount of Revolving Credit Facility Loans and L/C Obligations of such Lender acting as Swing Line Lender, may exceed the amount of such Lender's Revolving Facility Commitment; provided, however, that (x) after giving effect to any Swing Line Loan, (i) the Revolving Facility Credit Exposure shall not exceed the lower of the total Revolving Facility Commitment and the Borrowing Base at such time, and (ii) the Revolving Facility Exposure of any Lender shall not exceed such Lender's Revolving Facility Commitment, (y) Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (z) Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it has, or by making of such Swing Line Loan may have, Fronting Exposure. Within the foregoing limits, and subject to the other

terms and conditions hereof, Borrowers may borrow under this **Section 2.04**, prepay under **Section 2.11**, and re-borrow under this **Section 2.04**. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate. Immediately upon the making of a Swing Line Loan, each Revolving Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Revolving Facility Percentage multiplied by the amount of such Swing Line Loan.

(b) *Borrowing Procedures.* Each Swing Line Borrowing shall be made upon a Borrower's irrevocable notice to Swing Line Lender and Agent, which may be given by telephone. Each such notice must be received by Swing Line Lender and Agent not later than 1:00 p.m., on the requested borrowing date or such later time on the requested borrowing date as may be approved by Swing Line Lender in its discretion, and shall specify (i) the amount to be borrowed, which shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to Swing Line Lender and Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of such Borrower. Promptly after receipt by Swing Line Lender of any telephonic Swing Line Loan Notice, Swing Line Lender will confirm with Agent (by telephone or in writing) that Agent has also received such Swing Line Loan Notice and, if not, Swing Line Lender will notify Agent (by telephone or in writing) of the contents thereof. Unless Swing Line Lender has received notice (by telephone or in writing) from Agent (including at the request of any Lender) prior to 2:00 p.m., on the date of the proposed Swing Line Borrowing (A) directing Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of **Section 2.04(a)**, or (B) that one or more of the applicable conditions specified in **Article V** is not then satisfied or waived (and one or more such conditions are not in fact satisfied or waived), then, subject to the terms and conditions hereof, Swing Line Lender will, not later than 3:00 p.m., on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to Borrowers in immediately available funds either by (i) crediting the account of Borrowers on the books of Swing Line Lender with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to Swing Line Lender by Borrowers.

(c) *Refinancing of Swing Line Loans.*

(i) Swing Line Lender at any time in its discretion may request, on behalf of Borrowers (which hereby irrevocably authorize Swing Line Lender to so request on their behalf), that each Revolving Facility Lender make a Base Rate Loan in an amount equal to such Lender's Revolving Facility Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Borrowing Request for purposes hereof) and in accordance with the requirements of **Section 2.02** and **2.03**, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to sufficient Availability, the unutilized portion of the Revolving Facility and the conditions set forth in **Section 5.01**. Swing Line Lender shall furnish Borrowers with a copy of the applicable Borrowing Notice promptly after delivering such notice to Agent. Each Revolving Facility Lender shall make an amount equal to its Revolving Facility Percentage of the amount specified in such Borrowing Request available to Agent in immediately available funds (and Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of Swing Line Lender at Agent's Office not later than 1:00 p.m. on the day specified in such Borrowing Request, whereupon, subject to **Section 2.04(c)(ii)**, each Revolving Facility Lender that so makes funds available shall be deemed to have made a Base Rate Loan to Borrowers in such amount. Agent shall remit the funds so received to Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Facility Borrowing in accordance with **Section 2.04(c)(i)**, the request for Base Rate Loans submitted by Swing Line Lender as set forth herein shall be deemed to be a request by Swing Line Lender that each of the Revolving Facility Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Facility Lender's payment to Agent for the account of Swing Line Lender pursuant to **Section 2.04(c)(i)** shall be deemed payment in respect of such participation.

(iii) If any Revolving Facility Lender fails to make available to Agent for the account of Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.04(c)** by the time specified in **Section 2.04(c)(i)**, Swing Line Lender shall be entitled to recover from such Lender (acting through Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Facility Loan included in the relevant Revolving Facility Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of Swing Line Lender submitted to any Lender (through Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Facility Lender's obligation to make Revolving Facility Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this **Section 2.04(c)** shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against Swing Line Lender, any Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Facility Lender's obligation to make Revolving Facility Loans pursuant to this **Section 2.04(c)** is subject to the conditions set forth in **Section 5.01**.

(d) *Repayment of Participations.*

(i) At any time after any Revolving Facility Lender has purchased and funded a risk participation in a Swing Line Loan, if Swing Line Lender receives any payment on account of such Swing Line Loan, Swing Line Lender will distribute to such Revolving Facility Lender its Revolving Facility Percentage thereof in the same funds as those received by Swing Line Lender.

(ii) If any payment received by Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by Swing Line Lender under any of the circumstances described in **Section 10.05** (including pursuant to any settlement entered into by Swing Line Lender in its discretion), each Revolving Facility Lender shall pay to Swing Line Lender its Revolving Facility Percentage thereof on demand of Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. Agent will make such demand upon the request of Swing Line Lender. The obligations of Lenders under this clause shall survive the Full Payment of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. Swing Line Lender shall be responsible for invoicing Borrowers for interest on the Swing Line Loans. Until each Revolving Facility Lender funds its Base Rate Loan or risk participation pursuant to this **Section 2.04** to refinance such Revolving Facility Lender's Revolving Facility Percentage of any Swing Line Loan, interest in respect of such Revolving Facility Percentage shall be solely for the account of Swing Line Lender.

(f) Payments Directly to Swing Line Lender. Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to Swing Line Lender.

(g) Defaulting Lenders. Notwithstanding anything to the contrary contained in this **Section 2.04**, Swing Line Lender shall not be obligated to make any Swing Line Loan at a time when any Lender is a Defaulting Lender, unless Swing Line Lender has entered into arrangements satisfactory to it to eliminate its Fronting Exposure (after giving effect to **Section 2.16**) with respect to any Defaulting Lender's risk participations in, and all other obligations in respect of, Swing Line Loans, including by cash collateralizing such Defaulting Lender's Revolving Facility Percentage of all Swing Line Loans outstanding or to be outstanding hereunder.

Section 2.05. Letters of Credit.

(a) Existing Letters of Credit. On and after the Closing Date, each Existing Letter of Credit shall be deemed to have been issued hereunder and shall cease to be regarded as part of the Pre-Petition Obligations, shall constitute a Letter of Credit for all purposes hereof, and accordingly shall be entitled to all of the benefits and security of this Agreement and the other Credit Documents. All fees heretofore paid in respect of such Existing Letter of Credit shall be deemed to have been paid on account of Pre-Petition Obligations, and any unpaid fees in respect of such Existing Letters of Credit accrued as of the Closing Date and accruing subsequent thereto shall be deemed to be part of the Obligations. Where the context so requires, each reference in this Agreement to "Letters of Credit" shall include the Existing Letters of Credit.

(b) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Facility Lenders set forth in this **Section 2.05**, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of any Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Facility Lenders severally agree to participate in Letters of Credit issued for the account of any Borrower and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Revolving Facility Credit Exposure shall not exceed the lower of the total Revolving Facility Commitments and the Borrowing Base at such time, (y) the Revolving Facility Credit Exposure of any Lender shall not exceed such Lender's Revolving Facility Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by a Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have

been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to **Section 2.05(b)(iii)**, the expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) unless such L/C Issuer has otherwise agreed, the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date; provided that if any such Letter of Credit is outstanding on the Letter of Credit Expiration Date, Borrowers shall Cash Collateralize the Outstanding Amount of all L/C Obligations with respect to such Letter of Credit.

(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Laws applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate in any material respect one or more policies of the L/C Issuer applicable to letters of credit generally and customary for other issuers of letters of credit;

(C) except as otherwise agreed by Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than \$100,000, in the case of a commercial letter of credit, or \$500,000, in the case of a standby letter of credit;

(D) the Letter of Credit is to be denominated in a currency other than Dollars; or

(E) any Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its discretion) with Borrowers or such Lender to eliminate the L/C Issuer's actual or reasonably determined potential Fronting Exposure (after giving effect to **Section 2.16(a)(iv)**) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or reasonably determined potential Fronting Exposure.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the Revolving Facility Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and such L/C Issuer shall have all of the benefits and immunities (A) provided to Agent in **Article IX** with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in **Article IX** included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(vii) It is agreed that, in the case of the issuance of any commercial or trade letter of credit, such Letter of Credit shall in no event provide for time drafts or bankers' acceptances, unless a proper Reserve has been established with respect thereto.

(c) *Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.*

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of a Borrower delivered to the applicable L/C Issuer (with a copy to Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the applicable L/C Issuer, by personal delivery or by any other means acceptable to such L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and Agent not later than 2:00 p.m., at least 2 Business Days (or such later date and time as Agent and the L/C Issuer may agree in a particular instance in their discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other customary matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other customary matters as the L/C Issuer may reasonably require. Additionally, such Borrower shall furnish to the L/C Issuer and Agent such other customary documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with Agent (by telephone or in writing) that Agent has received a copy of such Letter of Credit Application from such Borrower and, if not, the L/C Issuer will provide Agent with a copy thereof. Unless one or more applicable conditions contained in Article V shall not then be satisfied or waived, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of such Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Facility Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Revolving Facility Percentage times the amount of such Letter of Credit.

(iii) If a Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that (x) any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued and (y) such prior notice shall be deemed to have been given by the L/C Issuer on the effective date of its resignation as L/C Issuer in accordance with **Section 10.06(f)**. Unless otherwise directed by the applicable L/C Issuer, such Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Facility Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date (unless the applicable L/C Issuer has otherwise agreed, in which case such expiry date may be later than the Letter of Credit Expiration Date, and if any such Letter of Credit is outstanding on the Letter of Credit Expiration Date, such Borrower shall Cash Collateralize the Outstanding Amount of all L/C Obligations with respect to such Letter of Credit); provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of **Section 2.05(b)** or otherwise), or (B) one or more of the applicable conditions specified in **Section 5.01** is not then satisfied or waived.

(iv) If a Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an "Auto-Reinstatement Letter of Credit"). Unless otherwise directed by the L/C Issuer, such Borrower shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Revolving Facility Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the "Non-Reinstatement Deadline"), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before

the day that is 7 Business Days before the Non-Reinstatement Deadline (A) from Agent that Required Lenders have elected not to permit such reinstatement or (B) from Agent, any Lender or a Borrower one or more of the applicable conditions specified in **Section 5.01** is not then satisfied (treating such reinstatement as a L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to Borrowers and Agent a true and complete copy of such Letter of Credit or amendment.

(d) *Drawings and Reimbursements; Funding of Participations.*

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify Borrowers and Agent thereof. Not later than 2:00 p.m., on the Business Day (each such date, an "Honor Date") following the date upon which Borrowers receive such notice from the L/C Issuer of a payment by the L/C Issuer under a Letter of Credit, Borrowers shall reimburse the L/C Issuer through Agent in an amount equal to the amount of such drawing. If Borrowers fail to so reimburse the L/C Issuer by such time, the L/C Issuer shall notify Agent who shall promptly notify each Revolving Facility Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Revolving Facility Lender's Revolving Facility Percentage thereof. In such event, Borrowers shall be deemed to have requested a Revolving Facility Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 1.01** for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Facility Commitments and the conditions set forth in **Section 5.01** (other than the delivery of a Borrowing Request). Any notice given by the L/C Issuer or Agent pursuant to this **Section 2.05(d)(i)** may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Facility Lender shall upon any notice pursuant to **Section 2.05(d)(i)** make funds available (and Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the account of Agent most recently designated by it for such purpose by notice to Lenders, in an amount equal to its Revolving Facility Percentage of the Unreimbursed Amount not later than 1:00 p.m., on the Business Day specified in such notice by Agent, whereupon, subject to the provisions of **Section 2.05(d)(iii)**, each Revolving Facility Lender that so makes funds available shall be deemed to have made a Base Rate Loan to Borrowers in such amount. Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Facility Borrowing of Base Rate Loans because the conditions set forth in **Section 5.01** cannot be satisfied or for any other reason, Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Facility Lender's payment to Agent for the account of the L/C Issuer pursuant to **Section 2.05(d)(ii)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this **Section 2.05**.

(iv) Until each Revolving Facility Lender funds its Revolving Facility Loan or L/C Advance pursuant to this **Section 2.05(d)** to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Revolving Facility Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Facility Lender's obligation to make Revolving Facility Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.05(d)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Facility Lender's obligation to make Revolving Facility Loans pursuant to this **Section 2.05(d)** is subject to the conditions set forth in Article V (other than delivery by Borrowers of a Borrowing Request). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Facility Lender fails to make available to Agent for the account of any L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.05(d)** by the time specified in **Section 2.05(d)(ii)**, then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Facility Loan included in the relevant Revolving Facility Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Facility Lender (through Agent) with respect to any amounts owing under this **Section 2.05(d)(vi)** shall be conclusive absent manifest error.

(e) Repayment of Participations.

(i) At any time after a L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Facility Lender such Lender's L/C Advance in respect of such payment in accordance with **Section 2.05(d)**, if Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from a Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Agent), Agent will distribute to such Lender its Revolving Facility Percentage thereof in the same funds as those received by Agent.

(ii) If any payment received by Agent for the account of the L/C Issuer pursuant to **Section 2.05(d)(i)** is required to be returned under any of the circumstances described in **Section 10.05** (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Facility Lender shall pay to Agent for the account of the L/C Issuer its Revolving Facility Percentage thereof on demand of Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to

the Federal Funds Rate from time to time in effect. The obligations of Lenders under this clause shall survive the Full Payment of the Obligations.

(f) Obligations Absolute. The obligation of Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Credit Document;

(ii) the existence of any Claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any of its Subsidiaries.

Each Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any Claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will immediately notify the L/C Issuer. Each Borrower shall be conclusively deemed to have waived any such Claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(g) Role of L/C Issuer. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the applicable L/C Issuer shall be liable to any Lender for: (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Facility Lenders or Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness,

validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to any of their use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude any Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of L/C Issuers, Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of **Section 2.05(f)**; provided, however, that anything in such clauses to the contrary notwithstanding, a Borrower may have a Claim against a L/C Issuer, and such L/C Issuer may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence or such L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and Borrowers when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to any Borrower for, and the L/C Issuer's rights and remedies against each Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any Laws, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Laws or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees. Borrowers shall pay to Agent for the account of each Revolving Facility Lender, in accordance with its applicable Revolving Facility Percentage, a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Margin for Eurodollar Rate Borrowings effective for each day during any month times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.04**. Letter of Credit Fees shall be (i) due and payable on the last Business Day of each month, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a monthly basis in arrears. If there is any change in the Applicable Margin during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, upon the request of Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate. Letter of Credit Fees shall be computed on the basis of the number of days actually elapsed in a 360-day year.

(j) Fronting Fee and Documentary and Processing Charges to L/C Issuers. Borrowers shall pay directly to each L/C Issuer for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at the rate of 0.125% per annum (or such lesser amount to any respective L/C Issuer as Borrowers may agree in writing with such L/C Issuer), computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrower and the L/C Issuer, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate of 0.125% per annum (or such lesser amount to any respective L/C Issuer as Borrowers may agree in writing with such L/C Issuer), computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each month in respect of the most recently-ended monthly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.04**. In addition, Borrowers shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable. The fees in this paragraph (j) are referred to collectively as "L/C Issuer Fees."

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Reporting. Each L/C Issuer will report in writing to Agent (i) on the first Business Day of each week, the aggregate face amount of Letters of Credit issued by it and outstanding as of the last Business Day of the preceding week, (ii) on or prior to each Business Day on which such L/C Issuer expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance or amendment, and the aggregate face amount of Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and such L/C Issuer shall advise Agent on such Business Day whether such issuance, amendment, renewal or extension occurred and whether the amount thereof changed), (iii) on each Business Day on which such L/C Issuer makes any L/C Disbursement, the date and amount of such L/C Disbursement and (iv) on any Business Day on which any Borrower fails to reimburse an L/C Disbursement required to be reimbursed to such L/C Issuer on such day, the date and amount of such failure.

Section 2.06. Funding of Borrowings. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 p.m., to the account of Agent most recently designated by it for such purpose by notice to Lenders; provided that Swing Line Loans shall be made as provided in **Section 2.04**. Agent will make such Loans available to Borrowers by promptly crediting the amounts so received, in like funds, to an account of Borrowers as specified in the Borrowing Request; provided that Base Rate Revolving Loans and Swing Line Borrowings made to finance the reimbursement in respect of Letters of Credit and Swing Line Loans shall be remitted by Agent to the applicable Issuing Bank or Swing Line Lender, as applicable.

(a) Unless Agent shall have received notice from any Lender prior to the proposed date of any Borrowing that such Lender will not make available to Agent such Lender's share of such Borrowing, Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this **Section 2.06** and may, in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if any Lender has not in fact made its share of the applicable Borrowing available to Agent, then the applicable Lender and Borrowers severally

agree to pay to Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrowers to but excluding the date of payment to Agent, at (i) in the case of such Lender, the greater of (A) the Federal Funds Rate and (B) a rate determined by Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of Borrowers, the interest rate applicable to Base Rate Loans at such time. If such Lender pays such amount to Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. In the event a Borrower pays such amount to Agent, then such amount shall reduce the principal amount of such Borrowing (but exclusive of any accrued and unpaid interest thereon).

Section 2.07. Interest Elections. Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Rate Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, Borrowers may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Rate Borrowing, may elect Interest Periods therefor, all as provided in this Section. Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swing Line Borrowings which may not be converted or continued.

(a) To make an election pursuant to this Section, Borrowers shall notify Agent of such election by telephone by the time that a Borrowing Request would be required under **Section 2.03** if Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to Agent of a written Interest Election Request in a form approved by Agent and signed by Borrowers.

(b) Each telephonic and written Interest Election Request shall be irrevocable and shall specify the following information in compliance with **Section 2.02**:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Rate Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Rate Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

(v) If any such Interest Election Request requests a Eurodollar Rate Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(c) Promptly following receipt of an Interest Election Request, Agent shall advise each Lender to which such Interest Election Request relates of the details thereof and of such Lender's portion of each resulting Borrowing.

(d) If Borrowers fail to deliver a timely Interest Election Request with respect to a Eurodollar Rate Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and Agent, at the written request (including a request through electronic means) of Required Lenders, so notifies Borrowers, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Rate Borrowing and (ii) unless repaid, each Eurodollar Rate Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto.

Section 2.08. Term, Termination and Reduction of Commitments. (a) Subject to each Secured Party's right to cease making Loans and other extensions of credit to Borrowers when any Default or Event of Default exists or upon termination of the Commitments as provided in this **Section 2.08** hereof, the Commitments shall be in effect for a period beginning on the Closing Date and ending on the close of business on the Commitment Termination Date.

(b) Borrowers may at any time terminate, or from time to time permanently reduce, the Revolving Facility Commitments; provided, that (i) each reduction of the Revolving Facility Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, if less, the remaining amount of the Revolving Facility Commitments), (ii) if as the result of any such reduction, the amount outstanding of the Obligations exceeds the total Revolving Facility Commitments, Borrowers shall immediately pay to Agent an amount sufficient to cause such Obligations to be less than or equal to the total Revolving Facility Commitments, and (iii) Borrowers shall not terminate or reduce the Revolving Facility Commitments if, after giving effect to any concurrent prepayment of the Revolving Facility Loans in accordance with **Section 2.11**, the Revolving Facility Credit Exposure would exceed the total Revolving Facility Commitments.

(c) Borrowers shall notify Agent of any election to terminate or permanently reduce the Revolving Facility Commitments under paragraph (b) of this **Section 2.08** at least 5 Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, Agent shall advise Lenders of the contents thereof. Each notice delivered by Borrowers pursuant to this Section shall be irrevocable; provided, that a notice of termination of the Revolving Facility Commitments delivered by Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities or the consummation of a Change in Control, in which case such notice may be revoked by Borrowers (by notice to Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among Lenders in accordance with their respective Commitments.

(d) On the effective date of termination of the Commitments by Agent or by Borrowers, all of the Obligations shall be immediately due and payable. All undertakings, agreements, covenants, warranties and representations of each Borrower contained in the Credit Documents shall survive any such termination, and Agent shall retain their Liens in the Collateral and all of their rights and remedies under the Credit Documents and applicable Laws, notwithstanding such termination, until Full Payment of the Obligations. Notwithstanding Full Payment of the Obligations, Agent shall not be required to terminate its Liens unless it receives Cash Collateral or a written agreement, in each case satisfactory to it, protecting Agent and Lenders from the dishonor or return of any Payment Items

previously applied to the Obligations. Upon Full Payment of the Obligations and Agent's receipt of an agreement or Cash Collateral in accordance with the preceding sentence, Agent will, at Borrowers' sole expense, (i) promptly release any Lien obtained by Agent after the Petition Date with respect to the Collateral (other than such Cash Collateral, if any), and (ii) execute and file, to the extent obtained or recorded by Agent after the Petition Date, such Lien releases and UCC termination statements as may be reasonably necessary to give effect to the foregoing. The provisions of **Sections 2.04, 2.05, 2.13, Article III, Article IX, 10.04, 10.05** and this **Section 2.08**, and all obligations of Borrowers to indemnify Agent or any Lender pursuant to this Agreement or any of the other Credit Documents, and each provision of an Credit Document expressly stating that such provision survives Full Payment of the Obligations or termination of the Commitments shall in all events survive such Full Payment and such termination.

Section 2.09. Agreement to Repay Loans; Evidence of Debt. (a) Borrowers hereby unconditionally promise to pay (i) to Agent for the account of each Lender the then unpaid principal amount of each Revolving Facility Loan of such Lender on the Maturity Date and (ii) to Swing Line Lender the then unpaid principal amount of each Swing Line Loan on the Maturity Date. All Borrowers are jointly and severally liable for all Obligations.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Facility and Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from Borrowers to each Lender hereunder and (iii) any amount received by Agent hereunder for the account of Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this **Section 2.09** shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender Party to maintain such accounts or any error therein shall not in any manner affect the obligation of Borrowers to repay the Loans in accordance with the terms of this Agreement. In the case of a conflict between the account maintained pursuant to paragraphs (b) and (c) of this **Section 2.06**, the entries in the account maintained by Agent shall control.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note (a "Note"). In such event, Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form approved by Agent and reasonably acceptable to Borrowers. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to **Section 10.06**) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.10. Repayment of Loans. (a) To the extent not previously paid, outstanding Revolving Facility Loans shall be due and payable on the Maturity Date.

(b) The ledger balance in the Dominion Accounts shall be immediately transferred to the Primary Payment Account as of the end of a Business Day and shall be applied to the Obligations at the beginning of the next Business Day. If a credit balance results from such application, it shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Default or

Event of Default exists. Each Borrower irrevocably waives the right to direct the application of any payments or Collateral proceeds in the Primary Payment Account or any Dominion Account, and agrees that Agent shall have the continuing, exclusive right to apply and reapply same against the Obligations or the Pre-Petition Obligations, in such manner as Agent or Pre-Petition Agent deems advisable.

(c) On each date that a Borrower (or a representative of creditors of a Borrower) or any Lender Party shall receive any cash proceeds of ABL Priority Collateral consisting of Accounts or Inventory, such proceeds shall be forthwith applied to any Revolving Facility Loans outstanding, provided that, until Full Payment of the Pre-Petition Obligations, each Borrower shall be required to remit to the Pre-Petition Agent, for application to the Pre-Petition Obligations, all proceeds of and collections with respect to any accounts and other rights to payment arising from services rendered or the sale, lease, use or other disposition of inventory, whether such other rights constitute payment intangibles, letter-of-credit rights, supporting obligations or any other classification of property or are evidenced in whole or in part by instruments, chattel paper or documents, in each case to the extent such proceeds are derived from ABL Priority Collateral in existence on the Petition Date, which proceeds shall be applied in the manner set forth in the Pre-Petition Credit Agreement. Each Borrower shall pay to the Pre-Petition Agent, for application to the Pre-Petition Obligations in the manner set forth in the Pre-Petition Credit Agreement, the gross book value, in the manner reported on the Borrowing Base Certificate, which value reflects lower of cost or market adjustments made by Borrowers consistent with past practices, of all Inventory existing on the Petition Date that is sold after the Petition Date; provided that such payment may be made by such Borrower obtaining a Revolving Facility Loan in accordance with this Agreement.

(d) Each repayment of a Borrowing shall be applied to the Revolving Facility Loans included in the repaid Borrowing such that each Revolving Facility Lender receives its ratable share of such repayment (based upon the respective Revolving Facility Credit Exposures of the Revolving Facility Lenders at the time of such repayment). Repayments of Eurodollar Rate Borrowings shall be accompanied by accrued interest on the amount repaid, together with any additional amounts required pursuant to **Section 3.05**.

(e) Notwithstanding anything to the contrary in this **Section 2.10**, on the Closing Date Borrowers shall be entitled to retain Cash Collateral from cash on hand as of such date in an amount up to but not exceeding \$10,000,000, which funds shall be used by Borrowers solely for such purposes and in such amounts as permitted hereunder for use of proceeds of Loans and by the DIP Budget; provided that at least \$5,000,000 of such funds shall be expended by Borrowers prior to requesting any Borrowings.

Section 2.11. Prepayment of Loans. (a) Borrowers shall have the right at any time and from time to time to repay any Loan in whole or in part, without premium or penalty (but subject to **Section 3.05**).

(b) In the event and on such occasion that an Out-of-Formula Condition exists at any time, Borrowers shall immediately prepay Revolving Facility Borrowings or Swing Line Borrowings (or, if no such Borrowings are outstanding, deposit Cash Collateral pursuant to **Section 2.16**) in an aggregate amount necessary to eliminate such Out-of-Formula Condition.

(c) In the event and on such occasion that the L/C Obligations exceed the lower of (i) Letter of Credit Sublimit or the total Revolving Facility Commitments and (ii) the Borrowing Base in effect at such time (including any reduction of the Borrowing Base as a result of the receipt of Non-Ordinary Course Proceeds), Borrowers shall immediately deposit Cash Collateral pursuant to **Section 2.16** in an amount equal to such excess.

(d) In the event and on such occasion that the Swing Line Loans exceed the lower of (i) Swing Line Loan Sublimit or the total Revolving Facility Commitments and (ii) the Borrowing Base in effect at such time (including any reduction of the Borrowing Base as a result of the receipt of Non-Ordinary Course Proceeds), Borrowers shall immediately prepay Swing Line Borrowings in an aggregate amount equal to such excess.

Section 2.12. Fees.

(a) Borrowers shall pay to Agent, for the account of each Revolving Facility Lender (other than Defaulting Lenders), in accordance with each such Lender's Revolving Facility Percentage, the Commitment Fee, which fee shall be earned and payable in full at Closing.

(b) Borrowers shall pay to Agent, for the account of each Revolving Facility Lender (other than Defaulting Lenders), in accordance with each such Lender's Revolving Facility Percentage, a fee (the "Unused Line Fee") equal to 0.50% per annum multiplied by the actual daily amount by which the Revolving Facility exceeds the sum of (i) the Outstanding Amount of Revolving Facility Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in **Section 2.17**. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the aggregate Commitments for purposes of determining the Unused Line Fee. The Unused Line Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be calculated and due and payable monthly in arrears on the last Business Day of each month, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period.

(c) Borrowers shall pay to Agent, for the account of the Incremental Revolving Facility Lender, an Unused Line Fee equal to 0.50% per annum multiplied by the actual daily amount by which the Incremental Revolving Facility Commitment exceeds the Outstanding Amount of Incremental Revolving Facility Loans. The Unused Line Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in **Article V** is not met, and shall be calculated and due and payable monthly in arrears on the last Business Day of each month, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period.

(d) Borrowers from time to time agree to pay such Letter of Credit Fees and L/C Issuer Fees as specified in **Section 2.05**.

(e) All Fees shall be paid on the dates due, in immediately available funds, to Agent for distribution, if and as applicable, among Lenders, except that L/C Issuer Fees shall be paid directly to the applicable L/C Issuers. Once paid, none of the Fees shall be refundable under any circumstances.

Section 2.13. Interest.

(a) The Loans comprising each Base Rate Borrowing (including each Swing Line Loan) shall bear interest at the Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Rate Borrowing shall bear interest at the Adjusted Eurodollar Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any Fees or other amount payable by any Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate (the "Default Rate") per annum equal to (i) in the case of overdue principal of any

Loan, 2.0% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this **Section 2.13** or (ii) in the case of any other amount, 2.0% plus the rate applicable to Base Rate Loans as provided in paragraph (a) of this Section; provided, that this paragraph (c) shall not apply to any Event of Default that has been waived by Lenders pursuant to **Section 10.01**.

(d) Accrued interest on each Loan shall be payable in arrears (i) on each Interest Payment Date for such Loan, (ii) upon termination of the Revolving Facility Commitments and (iii) on the applicable Maturity Date; provided, that (i) interest accrued pursuant to paragraph (c) of this **Section 2.13** shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Revolving Loan or a Swing Line Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of actual days elapsed in a year of 360 days, except that interest computed by reference to the Base Rate (including Base Rate Loans determined by reference to the Adjusted Eurodollar Rate) shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, Adjusted Eurodollar Rate or Eurodollar Base Rate shall be determined by Agent, and such determination shall be conclusive absent manifest error.

Section 2.14. Payments Generally; Pro Rata Treatment; Sharing of Setoffs. (a) Unless otherwise specified herein, Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of L/C Obligations, or of amounts payable under **Section 3.01, 3.04 or 3.05**, or otherwise) prior to 2:00 p.m., on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set off or counterclaim and free and clear of any Taxes (other than any applicable franchise Taxes and taxes on any Lender's overall net income). Any amounts received after such time on any date may, in the discretion of Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Agent to the applicable account designated to Borrowers by Agent, except payments to be made directly to the applicable L/C Issuer or Swing Line Lender as expressly provided herein and except that payments pursuant to **Sections 3.01, 3.04, 3.05 and 10.04** shall be made directly to the Persons entitled thereto. Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under the Credit Documents shall be made in Dollars. Any payment required to be made by Agent hereunder shall be deemed to have been made by the time required if Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by Agent to make such payment.

(b) If at any time insufficient funds are received by and available to Agent from Borrowers to pay fully all amounts of principal, unreimbursed L/C Obligations, interest and fees then due from Borrowers hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due from Borrowers hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, (ii) second, towards payment of principal of Swing Line Loans and unreimbursed L/C Obligations then due from Borrowers hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed L/C Obligations then due

to such parties and (iii) third, towards payment of principal of Revolving Facility Loans then due from Borrowers hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (i) Obligations due and payable to such Lender hereunder and under the other Credit Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Obligations due and payable to such Lender at such time to (y) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Credit Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Credit Documents at such time or (ii) Obligations owing (but not due and payable) to such Lender hereunder and under the other Credit Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (y) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Credit Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Credit Documents at such time, then the Lender receiving such greater proportion shall (A) notify Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to Lenders or owing (but not due and payable) to Lenders, as the case may be, provided that:

(i) if any such participations or sub-participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or sub-participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in **Section 2.16** or (C) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to any Borrower, unless, in the case of an assignment of Loans to any Borrower, such assignment is made in accordance with **Section 10.06** hereof.

Borrowers consent to the foregoing **Section 2.14(c)** and agree, to the extent they may effectively do so under applicable Laws, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against any Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless Agent shall have received notice from Borrowers prior to the date on which any payment is due to Agent for the account of Lenders or the L/C Issuer hereunder that Borrowers will not make such payment, Agent may assume that Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders the amount due. In such event, if Borrowers have not in fact made such payment, then each of the Appropriate Lenders severally agrees to repay to Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Agent, at the greater of the

Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation.

(e) Unless Agent shall have received notice from any Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon, on the date of such Borrowing) that such Lender will not make available to Agent such Lender's share of such Borrowing, Agent may assume that such Lender has made such share available on such date in accordance with **Section 2.02** (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by **Section 2.02**) and may, in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if any Lender has not in fact made its share of the applicable Borrowing available to Agent, then the applicable Lender and Borrowers severally agree to pay to Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrowers to but excluding the date of payment to Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrowers, the interest rate applicable to Base Rate Loans. If Borrowers and such Lender shall pay such interest to Agent for the same or an overlapping period, Agent shall promptly remit to Borrowers the amount of such interest paid by Borrowers for such period. If such Lender pays its share of the applicable Borrowing to Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Borrowers shall be without prejudice to any Claim Borrowers may have against any Lender that shall have failed to make such payment to Agent.

Section 2.15. Incremental Revolving Facility Commitment.

(a) Incremental Revolving Facility Loans. Incremental Revolving Facility Lender hereby agrees to provide the Incremental Revolving Facility Commitment on the terms and conditions and in the amount set forth herein. The Incremental Revolving Facility Commitment shall be subject to all of the terms and conditions set forth in this Agreement. The Incremental Revolving Facility Loans shall rank *pari passu* in right of payment and of security with the Revolving Facility Loans (subject to the "Borrowing Mechanics" provisions in clause (b) below and to **Section 8.04** of this Agreement), and, except as to pricing, shall have (x) the same terms as the Revolving Facility Loans, or (y) such other terms as shall be reasonably satisfactory to Agent; provided, that the interest rate margins then in effect for outstanding Revolving Facility Loans shall not be increased to equal the interest rate margins for Incremental Revolving Facility Loans.

(b) Borrowing Mechanics. Borrowings under this Agreement shall consist only of Incremental Revolving Facility Loans made pursuant hereto until the Outstanding Amount of such Incremental Revolving Facility Loans equals the lesser of the (i) Incremental Revolving Facility Commitment and (ii) Incremental Availability. No Incremental Revolving Facility Loans made pursuant hereto may be prepaid until the aggregate principal amount of Revolving Facility Loans (other than such Incremental Revolving Facility Loans) equals \$0.

(c) Pro Rata Basis. The parties hereto agree that Agent may take any and all action as may be reasonably necessary to ensure that all Incremental Revolving Facility Loans, when originally made, are included in each Borrowing of outstanding Revolving Facility Loans on a pro rata basis. Borrowers agree that **Section 3.05** shall apply to any conversion of Eurodollar Rate Loans to Base Rate Loans reasonably required by Agent to effect the foregoing.

Section 2.16. Cash Collateral.

(a) Certain Credit Support Events. If (i) an L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) Borrowers shall be required to provide Cash Collateral pursuant to **Section 8.01**, or (iv) there shall exist a Defaulting Lender, Borrowers shall immediately (in the case of clause (iii) above) or within one Business Day (in all other cases) following any request by Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to **Section 2.17(a)(iv)** and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to (and subject to the control of) Agent, for the benefit of Agent, L/C Issuers and Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to subsection (c) below. If at any time Agent determines that Cash Collateral is subject to any right or Claim of any Person other than Agent or an L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrowers will, promptly upon demand by Agent, pay or provide to Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more Controlled Accounts at Bank of America. Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 2.16** or **Sections 2.04, 2.05, 2.17 or 8.01** in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with **Section 10.06(b)(vi)**)) or (ii) the determination by Agent and the applicable L/C Issuer that there exists excess Cash Collateral; provided, however, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Credit Documents and the other applicable provisions of the Credit Documents, and (y) the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

Section 2.17. Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Laws:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and **Section 10.01**.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees, indemnity payments or other amounts received by Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article VIII** or otherwise) or received by Agent from a Defaulting Lender pursuant to **Section 10.09** shall be applied at such time or times as may be determined by Agent and Borrowers as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 2.16**; *fourth*, as Borrowers may request, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agent; *fifth*, if so determined by Agent and Borrowers, to be held in a deposit account and released pro-rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 2.16**; *sixth*, to the payment of any amounts owing to Lenders, L/C Issuers or the Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer or Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, to the payment of any amounts owing to Borrowers as a result of any judgment of a court of competent jurisdiction obtained by Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in **Section 5.01** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by Lenders pro-rata in accordance with the Commitments hereunder without giving effect to **Section 2.17(a)(iv)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 2.17(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Each Defaulting Lender shall be entitled to receive fees payable under **Section 2.12(a)** for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the outstanding principal amount of the Revolving Facility Loans funded by it, and (2) its Revolving Facility Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.16**.

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.16**.

(C) With respect to any fee payable under **Section 2.12(a)** or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the applicable L/C Issuers and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuers' or Swing Line Lender's Fronting Exposure to such Defaulting Lender and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Facility Percentages (calculated without regard to such Defaulting Lender's Revolving Facility Commitment) but only to the extent that (x) the conditions set forth in **Section 5.01** are satisfied at the time of such reallocation (and, unless Borrowers shall have otherwise notified Agent at such time, Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Facility Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Facility Commitment. No reallocation hereunder shall constitute a waiver or release of any Claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any Claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, Borrowers shall, without prejudice to any right or remedy available to them hereunder or under applicable Laws, (x) first, prepay Swing Line Loans in an amount equal to Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize L/C Issuers' Fronting Exposure in accordance with the procedures set forth in **Section 2.19**.

(b) Defaulting Lender Cure. If Borrowers, Agent, Swing Line Lender and one or more applicable L/C Issuer, in their discretion, agree in writing that any Lender is no longer a Defaulting Lender, Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro-rata basis by Lenders in accordance with their percentages (carried out to the ninth decimal place) of the applicable Facility, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrowers while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-

Defaulting Lender will constitute a waiver or release of any Claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.18. Agent Advances.

(a) Subject to the limitations set forth in the provisos contained in this **Section 2.18**, Agent is hereby authorized by Borrowers and Lenders, from time to time in Agent's discretion, (A) after the occurrence of a Default or an Event of Default, or (B) at any time that any of the other applicable conditions precedent set forth in Article V have not been satisfied, to make Revolving Facility Loans to Borrowers on behalf of Lenders which Agent, in its reasonable business judgment, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, (2) to enhance the likelihood of, or maximize the amount of, repayment of the Revolving Facility Loans and other ABL Credit Obligations, or (3) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement, including costs, fees, and expenses as described in **Section 10.04** (any of the advances described in this **Section 2.18** being hereinafter referred to as "Agent Advances"); provided that (x) the Revolving Facility Credit Exposure after giving effect to any Agent Advance shall not exceed the Revolving Facility Commitment and (y) Agent Advances outstanding and unpaid at no time will exceed \$10,000,000 in the aggregate, and provided further, that Required Lenders may at any time revoke Agent's authorization contained in this **Section 2.18** to make Agent Advances, any such revocation to be in writing and to become effective upon Agent's receipt thereof.

(b) Agent Advances shall be repayable on demand and secured by Agent's Liens in and to the Collateral, shall constitute Revolving Facility Loans and Obligations hereunder, and shall bear interest at the rate applicable to Base Rate Loans from time to time. Agent shall notify each Lender in writing of each Agent Advance; provided that any delay or failure of Agent in providing any such notice to any Lender shall not result in any liability or constitute the breach of any duty or obligation of Agent hereunder.

Section 2.19. Settlement. Except as may be specifically provided otherwise herein, it is agreed that each Lender's funded portion of the Revolving Facility Loans is intended by Lenders to be equal at all times to such Lender's applicable Pro Rata Share of the outstanding Revolving Facility Loans of such Type. Notwithstanding such agreement, Agent, Swing Line Lender, and Lenders agree (which agreement shall not be for the benefit of or enforceable by Borrowers) that in order to facilitate the administration of this Agreement and the other Credit Documents, settlement among them as to the Revolving Facility Loans, including the Swing Line Loans and the Agent Advances, shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement (a "Settlement") with Lenders on at least a weekly basis, or on a more frequent basis if so determined by Agent, (A) on behalf of Swing Line Lender, with respect to each outstanding Swing Line Loan, (B) for itself, with respect to each Agent Advance, and (C) with respect to collections received, in each case, by notifying Lenders of such requested Settlement by telecopy, telephone, or other means of written electronic communication, no later than 12:00 noon, on the date of such requested Settlement (the "Settlement Date"). Each Revolving Facility Lender (other than Swing Line Lender, in the case of Swing Line Loans, and Agent, in the case of Agent Advances) shall make the amount of such Lender's Pro Rata Share of the outstanding principal amount of the Swing Line Loans and Agent Advances with respect to which Settlement is requested available to Agent at Agent's Office not later than 3:00 p.m., on the Settlement Date applicable thereto, which may occur before or after the occurrence or during the continuation of a Default or an Event of Default and whether or not the applicable conditions precedent set forth in Article V have then been satisfied. Such amounts made available to Agent shall be applied against the amounts of the applicable Swing Line Loan

or Agent Advance and, together with the portion of such Swing Line Loan or Agent Advance representing Swing Line Lender's Pro Rata Share thereof, shall constitute Revolving Facility Loans of Lenders, respectively. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto, Agent shall, on behalf of Swing Line Lender with respect to each outstanding Swing Line Loan and for itself with respect to each Agent Advance, be entitled to recover such amount on demand from such Lender together with interest thereon at the Federal Funds Rate for the first 3 days from and after the Settlement Date and thereafter at the Interest Rate then applicable to Revolving Facility Loans that are Base Rate Loans.

(ii) Notwithstanding the foregoing, not more than one (1) Business Day after demand is made by Agent (whether before or after the occurrence of a Default or an Event of Default and regardless of whether Agent has requested a Settlement with respect to a Swing Line Loan or Agent Advance), each Lender (A) shall irrevocably and unconditionally purchase and receive from Swing Line Lender or Agent, as applicable, without recourse or warranty, an undivided interest and participation in such Swing Line Loan or Agent Advance equal to such Lender's Pro Rata Share of such Swing Line Loan or Agent Advance and (B) if Settlement has not previously occurred with respect to such Swing Line Loans or Agent Advances, upon demand by Swing Line Lender or Agent, as applicable, shall pay to Swing Line Lender or Agent as applicable, as the purchase price of such participation an amount equal to 100% of such Lender's Pro Rata Share of such Swing Line Loans or Agent Advances. If such amount is not in fact made available to Agent by any Lender, Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Federal Funds Rate for the first 3 days from and after such demand and thereafter at the Interest Rate then applicable to Base Rate Loans.

(iii) From and after the date, if any, on which any Lender purchases an undivided interest and participation in any Swing Line Loan or Agent Advance pursuant to clause (ii) preceding, Agent shall promptly distribute to such Lender such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by Agent in respect of such Swing Line Loan or Agent Advance.

(iv) Between Settlement Dates, to the extent no Agent Advances are outstanding, Agent may pay over to Swing Line Lender any payments received by Agent, which in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Facility Loans, for application to Swing Line Lender's Revolving Facility Loans, including Swing Line Loans. If, as of any Settlement Date, collections received since the then immediately preceding Settlement Date have been applied to Swing Line Lender's Revolving Facility Loans (other than to Swing Line Loans or Agent Advances in which any Lender has not yet funded its purchase of a participation, as provided for in the previous sentence), Swing Line Lender shall pay to Agent for the accounts of Lenders, to be applied to the outstanding Revolving Facility Loans of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Facility Loans. During the period between Settlement Dates, Swing Line Lender with respect to Swing Line Loans, Agent with respect to Agent Advances, and each Lender with respect to the Revolving Facility Loans other than Swing Line Loans and Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the actual average daily amount of funds employed by Swing Line Lender, Agent, and Lenders.

(v) Unless Agent has received written notice from any Lender to the contrary, Agent may assume that the applicable conditions precedent set forth in Article V have been satisfied and the requested Borrowing will not exceed Availability on any date for funding a

Revolving Facility Loan or Swing Line Loan. If any Lender makes available to Agent funds for any Revolving Facility Loan to be made by such Lender as provided in the provisions of this Article II, and such funds are not made available to Borrowers by Agent because the conditions set forth in Article V are not satisfied or waived in accordance with the terms hereof, Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

Section 2.20. Priority and Liens. All Loans, Letters of Credit and other credit accommodations made or issued hereunder to, and all other Obligations owing by, any Borrower shall constitute and be deemed a cost and expense of administration in the Chapter 11 Cases and shall be entitled to administrative status under Section 503(b) of the Bankruptcy Code and priority under Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over all other obligations, liabilities, and indebtedness of each Borrower, whether now in existence or hereafter incurred by any Borrower, and over any and all costs and expenses of administration incurred in any of the Chapter 11 Cases or in any superseding Chapter 7 case. The Obligations shall be secured by security interests in and Liens upon all real and personal property of Borrowers as and to the extent set forth in the Security Documents, including the Interim DIP Financing Order (and, to the extent the same or more favorable to Lender Parties, the Final DIP Financing Order), pursuant to Sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, with the priorities set forth in the DIP Financing Orders.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01. Taxes.

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.*

(i) Any and all payments by or on account of any obligation of any Borrower under any Credit Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of Agent or any Borrower) require the deduction or withholding of any Tax from any such payment by Agent or a Borrower, then Agent or such Borrower shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Borrower or Agent shall be required by the Code or other applicable Laws to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding Taxes, from any payment, then (A) such Borrower or Agent shall withhold or make such deductions as are determined by such Borrower or Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Borrower or Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions for Indemnified Taxes (including deductions for Indemnified Taxes applicable to additional sums payable under this **Section 3.01**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction of Indemnified Taxes been made.

(iii) If any Borrower or Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Borrower or

Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Borrower or Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions for Indemnified Taxes (including deductions for Indemnified Taxes applicable to additional sums payable under this **Section 3.01**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction of Indemnified Taxes been made.

(b) Payment of Other Taxes by Borrowers. Without limiting the provisions of subsection (a) above, Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Without duplication of any additional amounts paid pursuant to **Section 3.01(a)**, each of Borrowers shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 3.01**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrowers by any Lender or an L/C Issuer (with a copy to Agent), or by Agent on its own behalf or on behalf of any Lender or an L/C Issuer, shall be conclusive absent manifest error.

(ii) Each Lender and L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) Agent against any Indemnified Taxes attributable to such Lender or L/C Issuer (but only to the extent that any Borrower has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of Borrowers to do so), (y) Agent and Borrowers, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of **Section 10.06(d)** relating to the maintenance of a Participant Register and (z) Agent and Borrowers, as applicable, against any Excluded Taxes attributable to such Lender or L/C Issuer, in each case, that are payable or paid by Agent or a Borrower in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender or L/C Issuer by Agent shall be conclusive absent manifest error. Each Lender and L/C Issuer hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender or L/C Issuer, as the case may be, under this Agreement or any other Credit Document against any amount due to Agent under this clause (ii).

(d) Evidence of Payments. Upon request by Borrowers or Agent, as the case may be, after any payment of Taxes by any Borrower or Agent to a Governmental Authority as provided in this **Section 3.01**, Borrowers shall deliver to Agent or Agent shall deliver to Borrowers, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such

payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to Borrowers or Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender and L/C Issuer that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to Borrowers and Agent, at the time or times reasonably requested by Borrowers or Agent, such properly completed and executed documentation reasonably requested by Borrowers or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, each Lender and L/C Issuer, if reasonably requested by Borrowers or Agent, shall deliver such other documentation prescribed by applicable Laws or reasonably requested by Borrowers or Agent as will enable Borrowers or Agent to determine whether or not such Lender or L/C Issuer is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 3.01(e)(ii)(A), (ii)(B), (ii)(C) and (ii)(D)** below) shall not be required if in such Lender's, L/C Issuer's or Swing Line Lender's reasonable judgment such completion, execution or submission would subject such Lender or L/C Issuer to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender or L/C Issuer.

(ii) Without limiting the generality of the foregoing:

(A) each Lender or L/C Issuer that is a U.S. Person (or, if such Lender or L/C Issuer is disregarded as an entity separate from its owner for U.S. Federal tax purposes, is owned by a U.S. Person) shall deliver to the Borrower and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender or L/C Issuer becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of Borrowers or Agent), duly completed and executed originals of IRS Form W-9 certifying that such Lender or L/C Issuer or such U.S. Person, as applicable, is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of Borrowers or Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, the Person treated as its owner for U.S. Federal tax purposes) eligible for the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, duly completed and executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, duly completed and executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) duly completed and executed originals of IRS Form W-8ECI with respect to such Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, with respect to the Person treated as its owner for U.S. Federal tax purposes);

(3) in the case of a Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, the Person treated as its owner for Federal tax purposes) entitled to the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 attached hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) duly completed and executed originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, the Person treated as its owner for U.S. Federal tax purposes) is not the beneficial owner, duly completed and executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3 attached hereto, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 attached hereto on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of Borrowers or Agent), executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit Borrowers or Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to any Lender or L/C Issuer under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender or L/C Issuer were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender or L/C Issuer shall deliver to Borrowers and Agent at the time or times prescribed by applicable Laws and at such time or times reasonably requested by Borrowers or Agent such documentation prescribed by applicable Laws (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrowers or Agent as may be necessary for Borrowers and Agent to comply with their obligations under FATCA and to determine that such Lender or L/C Issuer has complied with such Lender's obligations under FATCA or to determine

the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender or L/C Issuer agrees that if any form or certification it previously delivered pursuant to this **Section 3.01** expires or becomes obsolete or inaccurate in any respect, it shall promptly (x) update such form or certification or (y) notify Borrowers and Agent in writing of its legal inability to do so.

(iv) Each Lender, L/C Issuer and Swing Line Lender shall promptly (A) notify Borrowers, Holdings and Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender or L/C Issuer, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that Borrowers or Agent make any withholding or deduction for Taxes from amounts payable to such Lender, L/C Issuer or Swing Line Lender.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of any Lender or an L/C Issuer, or have any obligation to pay to any Lender or an L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or an L/C Issuer. If any Recipient receives a refund of any Taxes as to which it has been indemnified by any Borrower or with respect to which any Borrower has paid additional amounts pursuant to this **Section 3.01**, such Recipient shall pay to such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Borrower under this **Section 3.01** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that such Borrower, upon the request of the Recipient, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Borrower or any other Person.

(g) Survival. Each party's obligations under this **Section 3.01** shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, any Lender or an L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 3.02. Illegality. If any Lender determines that any Laws have made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Base Rate, or to determine or charge interest rates based upon the Eurodollar Base Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Borrowers through Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Base Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Agent without reference to the Eurodollar Base Rate component of the Base Rate, in each case until such Lender notifies

Agent and Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) Borrowers shall, upon demand from such Lender (with a copy to Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Agent without reference to the Eurodollar Base Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Base Rate, Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Base Rate component thereof until Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Base Rate. Each Lender agrees to notify Agent and Borrowers in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Base Rate. Upon any such prepayment or conversion, Borrowers shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03. Inability to Determine Rates. If Required Lenders advise Agent prior to a Eurodollar Rate Borrowing or a conversion of a Base Rate Loan to a Eurodollar Rate Loan or a continuation of a Eurodollar Rate Loan that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (ii) adequate and reasonable means do not exist for determining the Eurodollar Base Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan or (iii) the Eurodollar Base Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Agent will as promptly as practicable so notify Borrowers (by telephone and/or facsimile) and each Lender. Thereafter, (x) any Interest Election Request that requests the conversion of any Base Rate Loan to a Eurodollar Rate Loan or the continuation of a Eurodollar Rate Loan shall be ineffective, (y) if any Borrowing Request requests a Eurodollar Rate Borrowing, then such Borrowing shall be made as a Base Rate Borrowing and (z) in the event of a determination described in the preceding sentence with respect to the Eurodollar Base Rate component of the Base Rate, the utilization of the Eurodollar Base Rate component in determining the Base Rate shall be suspended, in each case until Agent (upon the instruction of Required Lenders) revokes such notice. Notwithstanding anything to the contrary herein, upon receipt of such notice, Borrowers may revoke any pending request for a Eurodollar Rate Borrowing, conversion of a Base Rate Loan to a Eurodollar Rate Loan or a continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04. Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits with or for the account of, or credit extended or participated in by, any Lender (or its applicable Lending Office) (except any reserve requirement which is reflected in the determination of the Adjusted Eurodollar Rate hereunder) or any L/C Issuer;

(ii) subject any Recipient to any Taxes other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C)

Connection Income Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender (or its applicable Lending Office) or L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its applicable Lending Office) of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Base Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or any L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or L/C Issuer, Borrowers will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital or Liquidity Requirements. If any Lender or an L/C Issuer determines that any Change in Law affecting such Lender or an L/C Issuer or its applicable Lending Office or such Lender's or an L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or an L/C Issuer's capital or on the capital of such Lender's or an L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or L/C Issuer's policies and the policies of such Lender's or L/C Issuer's holding company with respect to capital adequacy), then from time to time Borrowers will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of any Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to Borrowers shall be conclusive absent manifest error. Borrowers shall pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delays in Requests. Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to the foregoing provisions of this **Section 3.04** shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation; provided that Borrowers shall not be required to compensate any Lender or L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or L/C Issuer, as the case may be, notifies Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(a) The foregoing provisions of this **Section 3.04** shall not apply with respect to Taxes, which shall instead be governed by **Section 3.01**.

Section 3.05. Compensation for Losses. Upon demand of any Lender (with a copy to Agent) from time to time, Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by such Lender as a result of:

- (i) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
- (ii) any failure by Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by Borrowers pursuant to this Agreement; or
- (iii) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrowers pursuant to **Section 10.14**;

including any loss or expense arising from the breakage, liquidation or reemployment of funds obtained by such Lender to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by Borrowers to Lenders under this **Section 3.05**, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Base Rate for such Loan by a matching deposit or, other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

Section 3.06. Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under **Section 3.04**, or if any Borrowers is required to pay any Indemnified Taxes or additional amounts to any Lender, any L/C Issuer or any Governmental Authority for the account of any Lender or L/C Issuer pursuant to **Section 3.01**, or if any event gives rise to the operation of **Section 3.02**, such Lender or L/C Issuer shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender or L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.01** or **3.04**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 3.02**, as applicable, and (ii) would not subject such Lender or L/C Issuer to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or L/C Issuer, as the case may be, in any material respect. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under **Section 3.04**, or if any Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender or L/C Issuer pursuant to **Section 3.01** and, in each case, such Lender or L/C Issuer has declined or is unable to designate a different Lending Office in accordance with **Section 3.06(a)**, Borrowers may replace such Lender or L/C Issuer in accordance with **Section 10.14**.

Section 3.07. Survival. All of Borrowers' obligations under this Article III shall survive repayment of all other Obligations hereunder and resignation of Agent.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

On the date of each Credit Event as provided in **Sections 5.01** and **5.02**, each of Holdings and Borrowers represents and warrants to Agent and each of Lenders that:

Section 4.01. Organization; Powers. Except as set forth on Schedule 4.01, each Borrower (a) is a partnership, limited liability company or corporation duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the Laws of any jurisdiction of organization outside the United States) under the Laws of the jurisdiction of its organization, (b) subject to entry of the DIP Financing Orders and to the terms thereof, has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required, except where the failure so to qualify would not reasonably be expected to have a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Credit Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of each Borrower, to borrow and otherwise obtain credit hereunder.

Section 4.02. Authorization. The execution, delivery and performance by each Borrower of each of the Credit Documents to which it is a party, and the borrowings hereunder and the transactions forming a part of the Transactions (a) have been duly authorized by all corporate, stockholder, partnership or limited liability company action required to be obtained by each Borrower and (b) will not (i) violate (A) any provision of Laws, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreements) or by Laws of any Borrower, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any Post-Petition agreement to which any Borrower is a party or by which any of them or any of their property is or may be bound, where any such violation would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by any Borrower, other than the Liens created by the Credit Documents and Permitted Liens.

Section 4.03. Enforceability. Subject to entry of the Interim DIP Financing Order and to the terms thereof, this Agreement has been duly executed and delivered by each Borrower and constitutes, and each other Credit Document when executed and delivered by each Borrower will constitute, a legal, valid and binding obligation of such Borrower enforceable against each such Borrower in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar Laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

Section 4.04. Governmental Approvals. Subject to entry of the Interim DIP Financing Order and to the terms thereof, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by any Agent or any Lender of its rights under the Credit Documents or the remedies in respect of the Collateral, except for (a) such as have been made or obtained and are in full force and effect and (b) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect.

Section 4.05. Financial Statements.

(a) On and as of the Closing Date, the DIP Budget for the 13-week period from the week ending [●], 2016 through and including the week ending [●], 2016, copies of which have heretofore been furnished to Agent and the Lenders and (ii) following the Closing Date, the DIP Budget delivered pursuant to **Section 6.04(k)**, in each case are based on good faith estimates and assumptions made by the management of Holdings; provided that the DIP Budget is not to be viewed as facts and that actual results during the period or periods covered by the DIP Budget may differ from the DIP Budget and that the differences may be material; provided, further, the DIP Budget was based in good faith on assumptions believed by the management of Holdings to be reasonable at the time made and (1) in the case of the DIP Budget in clause (a) above, on the Closing Date and (2) in the case of the DIP Budget delivered pursuant to clause (ii) above, the date of delivery of the same (it being understood that assumptions as to future results are inherently subject to uncertainty and contingencies, many of which are beyond Borrowers' control).

(b) The audited combined balance sheets of Holdings and its consolidated Subsidiaries as at the end of the 2014 and 2013 fiscal years, and the related audited combined statements of income, stockholders' equity, and cash flows for such fiscal years, reported on by and accompanied by a report from Ernst & Young LLP, copies of which have heretofore been furnished to each Lender, present fairly in all material respects the combined financial position of Holdings and its consolidated Subsidiaries as at such date and the combined results of operations, stockholders' equity, and cash flows of Holdings and its consolidated Subsidiaries for the years then ended.

Section 4.06. No Material Adverse Effect. Since December 31, 2015, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect (other than commencement of the Chapter 11 Cases).

Section 4.07. Title to Properties; Possession Under Leases. (a) Each Borrower has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its Real Properties (including all Mortgaged Properties) and has valid title to its personal property and assets, in each case, except for Permitted Liens and except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such title would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens other than Permitted Liens.

(a) Each Borrower has complied with all obligations under all leases to which it is a party, except where the failure to comply would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and all such leases are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.07(b), each Borrower enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) As of the Closing Date, no Borrower has received any notice of any pending or contemplated condemnation proceeding affecting any material portion of the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation that remains unresolved as of the Closing Date.

Section 4.08. Subsidiaries. (a) Schedule 4.08(a) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of each direct and indirect Subsidiary of

Holdings and, as to each such Subsidiary, the percentage of each class of Equity Interests owned by Holdings or by any such Subsidiary.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of any Borrower or any of its Subsidiaries, except as set forth on Schedule 4.08(b).

Section 4.09. Litigation; Compliance with Laws. (a) Except for the Chapter 11 Cases, there are no actions, suits or proceedings at law or in equity or, to the knowledge of any Borrower, investigations by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of any Borrower, threatened in writing against or affecting any Borrower or any business, property or rights of any such Person which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of Borrowers or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any Laws, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws, which are subject to **Section 4.16**) or any restriction of record or agreement affecting any Mortgaged Property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 4.10. Federal Reserve Regulations. (a) No Borrower is engaged principally, or as one of their important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

Section 4.11. Investment Company Act. No Borrower is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

. [Reserved]

Section 4.13. Taxes. Except as set forth on Schedule 4.13:

(i) except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each Borrower has filed or caused to be filed all federal, state, local and non U.S. Tax returns required to have been filed by it and (ii) each such Tax return is true and correct;

(ii) each Borrower has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a)(i) above and all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date (except Taxes or assessments that are being contested in good faith by appropriate

proceedings in accordance with **Section 6.03** and for which any Borrower (as the case may be) has set aside on its books adequate reserves in accordance with GAAP), which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(iii) other than as would not be, individually or in the aggregate, reasonably expected to have a Material Adverse Effect as of the Closing Date, with respect to each Borrower, there are no Claims being asserted in writing by any Governmental Authority with respect to any Taxes.

Section 4.14. No Material Misstatements. (a) All written information (other than the DIP Budget, estimates and information of a general economic nature or general industry nature) (the "Information") concerning each Borrower, the Transactions and any other transactions contemplated hereby and prepared by or on behalf of any Borrower or its representatives and made available to any Lender or Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects, as of the date such Information was furnished to Lenders and, if delivered prior to the Closing Date, as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

(b) The DIP Budget and estimates and information of a general economic nature prepared by or on behalf of any Borrower or any of its representatives and that have been made available to any Lenders or Agent in connection with the Transactions or the other transactions contemplated hereby (i) have been prepared in good faith based upon assumptions believed by Borrowers to be reasonable as of the date thereof (it being understood that actual results may vary materially from the DIP Budget), as of the date such DIP Budget and estimates were furnished to Lenders and as of the Closing Date, and (ii) as of the Closing Date, have not been modified in any material respect by any Borrower.

(c) No Credit Document contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein not materially misleading. There is no fact or circumstance that any Borrower has failed to disclose to Agent in writing that could reasonably be expected to have a Material Adverse Effect.

Section 4.15. Employee Benefit Plans.

(a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each ERISA Plan is in compliance in all material respects with the applicable provisions of ERISA and the Code; (ii) no Reportable Event has occurred during the past five years as to which any Borrower, any of their Subsidiaries or any ERISA Affiliate was required to file a report with the PBGC, other than reports that have been filed; (iii) no ERISA Plan has any Unfunded Pension Liability in excess of \$500,000; (iv) no ERISA Event has occurred or is reasonably expected to occur; and (v) none of Borrowers, their Subsidiaries and the ERISA Affiliates (A) has received any written notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, or has knowledge that any Multiemployer Plan is reasonably expected to be in reorganization or to be terminated or (B) has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan.

(b) Each of Borrowers and their Subsidiaries is in compliance (i) with all applicable provisions of law and all applicable regulations and published interpretations thereunder with respect to any employee pension benefit plan or other employee benefit plan governed by the laws of a jurisdiction

other than the United States and (ii) with the terms of any such plan, except, in each case, for such noncompliance that would not reasonably be expected to have a Material Adverse Effect.

(c) Within the last five years, no ERISA Plan of any Borrower, any Subsidiaries or the ERISA Affiliates has been terminated, whether or not in a “standard termination” as that term is used in Section 404(b)(1) of ERISA, that would reasonably be expected to result in liability to any Borrower, any Subsidiaries of the ERISA Affiliates in excess of \$500,000, nor has any ERISA Plan of any Borrower, any Subsidiaries or the ERISA Affiliates (determined at any time within the past 5 years) with Unfunded Pension Liabilities been transferred outside of the “controlled group” (with the meaning of Section 4001(a)(14) of ERISA) of Borrowers, any Subsidiaries or the ERISA Affiliates that has or would reasonably be expected to result in a Material Adverse Effect

Section 4.16. Environmental Matters. Except as set forth in Schedule 4.16 and except as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice, request for information, order, complaint or penalty has been received by any Borrower, and there are no judicial, administrative or other actions, suits or proceedings pending or, to any Borrower's knowledge, threatened which allege a violation of or liability under any Environmental Laws, in each case relating to any Borrower, (ii) each Borrower has all environmental permits, licenses and other approvals necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits, licenses and other approvals and with all other applicable Environmental Laws, (iii) to each Borrower's knowledge, no Hazardous Material is located at, on or under any property currently owned, operated or leased by any Borrower that would reasonably be expected to give rise to any cost, liability or obligation of any Borrower under any Environmental Laws, and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by any Borrower and transported to or Released at any location in a manner that would reasonably be expected to give rise to any cost, liability or obligation of any Borrower under any Environmental Laws and (iv) there are no agreements in which any Borrower has expressly assumed or undertaken responsibility for any known or reasonably likely liability or obligation of any other person arising under or relating to Environmental Laws, which in any such case has not been made available to Agent prior to the date hereof.

Section 4.17. Security Documents. (a) Subject to and upon entry of the Interim DIP Financing Order, the Collateral Agreement is effective to create in favor of Agent (for the benefit of Secured Parties) a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. To the extent not previously delivered to the Pre-Petition Agent or the Pre-Petition Term Agent, as applicable, in the case of the Pledged Collateral under (and as defined in) the Collateral Agreement, when certificates or promissory notes, as applicable, representing such Pledged Collateral are delivered to Agent, and in the case of the other Collateral described in the Collateral Agreement (other than the Intellectual Property (as defined in the Collateral Agreement)), when financing statements and other filings specified in the Perfection Certificate are filed in the offices specified in the Perfection Certificate subject to and upon entry of the Interim DIP Financing Order, Agent (for the benefit of Secured Parties) shall have a perfected Lien on, and security interest in, all right, title and interest of Borrowers in such Collateral and, subject to Section 9-315 of the New York Uniform Commercial Code, the proceeds thereof, as security for the Obligations to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, in each case with the priority set forth in the applicable DIP Financing Order.

(b) Subject to entry of the Interim DIP Financing Order, when the Collateral Agreement or a summary thereof is properly filed in the United States Patent and Trademark Office and the United States Copyright Office, and, with respect to Collateral in which a security interest cannot be

perfected by such filings, upon the proper filing of the financing statements referred to in paragraph (a) above, Agent (for the benefit of Secured Parties) shall have a perfected Lien on, and security interest in, all right, title and interest of Borrowers thereunder in all domestic Intellectual Property, in each case prior and superior in right to any other Person (except Permitted Liens and subject to the Intercreditor Agreement), it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by Borrowers after the Closing Date.

(c) Subject to entry of the Interim DIP Financing Order, Agent (for the benefit of Secured Parties) will have, effective upon entry of the Interim DIP Financing Order, a valid Lien on all of Borrowers' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and, subject to the entry of the DIP Financing Orders, Agent (for the benefit of Secured Parties) will have, effective upon entry of the Interim DIP Financing Order, a perfected Lien on, and security interest in, all right, title and interest of Borrowers in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform Commercial Code, the proceeds thereof, in each case prior and superior in right to any other Person, subject to the DIP Financing Orders and the Intercreditor Agreement..

(d) Notwithstanding anything herein (including this **Section 4.17**) or in any other Credit Document to the contrary, no Borrower makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary that is not a Borrower, or as to the rights and remedies of Agent, Agent or any Lender with respect thereto, under foreign Laws.

Section 4.18. Location of Real Property and Leased Premises. (a) The Perfection Certificate correctly sets forth and identifies, in all material respects, as of the Closing Date all material Real Property owned by Borrowers and the addresses thereof. As of the Closing Date, Borrowers own in fee all the Real Property set forth as being owned by them on such schedules to the Perfection Certificate.

(b) The Perfection Certificate completely and correctly sets forth and identifies, in all material respects, as of the Closing Date, all material Real Property leased by Borrowers and the addresses thereof and the leases pursuant to which the Real Property is leased.

Section 4.19. [Reserved]

Section 4.20. Labor Matters. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or threatened against any Borrower; (b) the hours worked and payments made to employees of each Borrower have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from each Borrower or for which any Claim may be made against any Borrower, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Borrower to the extent required by GAAP. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which any Borrower (or any predecessor) is a party or by which any Borrower (or any predecessor) is bound.

Section 4.21. Insurance. Schedule 4.21 sets forth a true, complete and correct description, in all material respects, of all material insurance maintained by or on behalf of each Borrower as of the Closing Date. As of such date, such insurance is in full force and effect.

Section 4.22. No Default. Subject to the entry of the DIP Financing Orders and subject to the terms thereof, no event has occurred and no condition exists which would, upon or immediately after the execution and delivery of this Agreement or any Borrower's performance hereunder, constitute a Default or an Event of Default.

Section 4.23. Intellectual Property; Licenses, etc. Except as would not reasonably be expected to have a Material Adverse Effect and as set forth in Schedule 4.23, (a) each Borrower owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights, mask works, domain names, and any and all applications or registrations for any of the foregoing (collectively, "Intellectual Property Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, (b) to the best knowledge of each Borrower, neither any Borrower nor any Intellectual Property Right, proprietary right, product, process, method, substance, part, or other material now employed, sold or offered by or contemplated to be employed, sold or offered by any Borrower infringes upon Intellectual Property Rights of any other Person, and (c) no Claim or litigation regarding any of the foregoing is pending or, to the best knowledge of each Borrower, threatened.

Section 4.24. Senior Debt. The Obligations constitute "Senior Debt" (or the equivalent thereof) and "Designated Senior Debt" (or the equivalent thereof) under the documentation governing any outstanding Indebtedness, if any, permitted to be incurred hereunder constituting Indebtedness that, by its terms, is expressly subordinated in right of payment to the Obligations pursuant to written agreement.

Section 4.25. OFAC. No Borrower (a) is a Sanctioned Person, (b) has any of its assets in Sanctioned Entities, or (c) derives any of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities, in each case, that would constitute a violation of applicable Laws. No proceeds of any Loan will be used and none have been used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, in each case, that would constitute a violation of applicable Laws.

Section 4.26. Borrowing Base Matters. The calculation by Borrowers of the Borrowing Base in each Borrowing Base Certificate delivered hereunder is complete and accurate in all material respects as of the time such calculation was made. Agent may rely, in determining which Accounts are Eligible Accounts, and which Inventory is Eligible Inventory, on all statements and representations by each Borrower with respect thereto, as contained in the Borrowing Base Certificate, and in any other Credit Document.

Section 4.27. Rod Mill Indebtedness. The aggregate amount of the outstanding indebtedness owing by one or more Borrowers as of the date hereof to the Missouri Department of Economic Development, Jefferson County, Missouri and/or New Madrid County, Missouri that is or may be secured by Liens on any ABL Priority Collateral does not exceed \$3,500,000.

ARTICLE V CONDITIONS OF LENDING

The obligations of (a) Lenders to make Loans and (b) any L/C Issuer to issue Letters of Credit or increase the stated amounts of Letters of Credit hereunder (each, a "Credit Event") are subject to the satisfaction or waiver (in accordance with **Section 10.01** hereof) of the following conditions:

Section 5.01. All Credit Events. On the date of each Credit Event:

(a) Each of the conditions set forth in **Section 5.02** has been and continues to be satisfied;

(b) Agent shall have received, in the case of a Borrowing, a Borrowing Request and a Borrowing Base Certificate as required by this Agreement (or a Borrowing Request shall have been deemed given in accordance with the last paragraph of **Section 2.03**) or, in the case of the issuance of a Letter of Credit, the applicable L/C Issuer and Agent shall have received a notice requesting the issuance of such Letter of Credit as required by **Section 2.05**.

(c) The representations and warranties set forth in the Credit Documents shall be true and correct in all material respects as of such date (other than an amendment, extension or renewal of a Letter of Credit without any increase in the stated amount of such Letter of Credit), as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(d) At the time of and immediately after such Borrowing or issuance, amendment, extension or renewal of a Letter of Credit (other than an amendment, extension or renewal of a Letter of Credit without any increase in the stated amount of such Letter of Credit), as applicable, no Default, Event of Default or Out-of-Formula Condition shall have occurred and be continuing or would result therefrom.

(e) The request for Loans or other extensions of credit shall be in accordance with the DIP Budget (and Permitted Variances) in effect from time to time shall have been approved by Lender Parties and the DIP Financing Orders, and each of the conditions precedent to funding set forth in any other Credit Document shall have been and remain satisfied as of the funding date.

(f) Except for the Chapter 11 Cases, no action, proceeding, contested matter, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain or prohibit, or to obtain damages in respect of this Agreement, or which is related to or arises out of, this Agreement or any of the other Credit Documents or the consummation of the transactions contemplated hereby or thereby.

(g) No event shall have occurred or circumstance or condition shall exist that has or could reasonably be expected to have a Material Adverse Effect.

(h) With respect to the issuance of any Letter of Credit after the Closing Date, each of the conditions required in connection therewith hereunder shall have been satisfied.

(i) Each Borrower shall have paid all fees and expenses then due and payable as provided for herein or in any of the other Credit Documents.

(j) Each Borrower shall have, at the time of the delivery of each Borrowing Request for a proposed Loan, remitted to Agent all cash on hand and all cash proceeds of any ABL Priority Collateral, except as otherwise set forth herein and in the DIP Financing Orders.

(k) After giving effect to the requested Revolving Facility Loans or issuance of a Letter of Credit, (1) the principal amount outstanding under the Revolving Loan Facility (including issued and outstanding Letters of Credit) and the principal amount outstanding under the Pre-Petition Credit Agreement (including issued and outstanding Existing Letters of Credit) will not exceed the Borrowing Base, (2) the aggregate amount of the Letters of Credit outstanding plus the aggregate amount of Existing

Letters of Credit outstanding will not exceed the Letter of Credit Sub-Limit, and (3) the principal amount of the Swing Line Loans outstanding under the Revolving Facility and the principal amount of any swing line loans outstanding under the Pre-Petition Credit Agreement will not exceed the Swing Line Loan Sub-Limit.

(l) With respect to all Loans and other extensions of credit requested on or after the Closing Date but before the expiration of the Interim Period, the Interim DIP Financing Order shall have been entered, shall be in full force and effect, and shall not have been vacated, reversed, modified, amended or stayed after its entry, without the prior written consent of Agent and Required Lenders.

(m) With respect to all Loans and other extensions of credit requested after the expiration of the Interim Period, following proper notice and a hearing thereon, the final hearing on the DIP Financing Motion shall have been held, with the presentation of evidence and the resolution of any objections to the DIP Financing Motion or to the proposed Final DIP Financing Order in a manner satisfactory to Agent (and with respect to any material change to the form of Interim DIP Financing Order entered by the Court, Required Lenders), the Final DIP Financing Order shall have been entered on or before the expiration of the Interim Period, shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed after its entry without the prior written consent of Agent and Required Lenders, and each Borrower is in compliance with the Final DIP Financing Order .

(n) Upon entry of the Final DIP Financing Order, Lenders Parties shall receive (i) a waiver of any “equities of the case” claim under Section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of Section 506(c) of the Bankruptcy Code. In no event shall any of Lender Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

(o) Agent shall have received all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT Act to the extent requested not less than 5 Business Days prior to the relevant Credit Event.

Each such Credit Event shall be deemed to constitute a representation and warranty by each Borrower on the date of such Borrowing, issuance, amendment, extension or renewal as applicable, as to the matters specified in this **Section 5.01**.

Section 5.02. First Credit Event. On or prior to the Closing Date.

(a) Agent (or its counsel) shall have received from each party thereto either (i) a counterpart of this Agreement and each other Credit Document to be executed on or prior to the Closing Date, signed on behalf of such party or (ii) written evidence satisfactory to Agent (which may include electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and such other applicable Credit Documents.

(b) With respect to any Borrowing to be made or Letter of Credit to be issued at Closing, Agent shall have received, in the case of a Borrowing, a Borrowing Request and a Borrowing Base Certificate as required by this Agreement (or a Borrowing Request shall have been deemed given in accordance with the last paragraph of **Section 2.03**) or, in the case of the issuance of a Letter of Credit , the applicable L/C Issuer and Agent shall have received a notice requesting the issuance of such Letter of Credit as required by **Section 2.05**.

(c) Agent shall have received in the case of each Borrower each of the items referred to in clauses (i), (ii), (iii) and (iv) below:

(i) a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Borrower, (A) in the case of a corporation, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the Laws of such jurisdiction) of each such Borrower as of a recent date from such Secretary of State (or other similar official) or (B) in the case of a partnership or limited liability company, certified by the Secretary or Assistant Secretary of each such Borrower;

(ii) a certificate of the Secretary or Assistant Secretary or similar officer of each Borrower dated the Closing Date and certifying:

(A) that attached thereto is a true and complete copy of the bylaws (or partnership agreement, limited liability company agreement or other equivalent governing documents) of such Borrower as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below;

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Borrower (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Credit Documents to which such Person is a party and, in the case of a Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date;

(C) that the certificate or articles of incorporation, certificate of limited partnership or certificate of formation of such Borrower has not been amended since the date of the last amendment thereto disclosed pursuant to clause (i) above; and

(D) as to the incumbency and specimen signature of each officer executing any Credit Document or any other document delivered in connection herewith on behalf of such Borrower; and

(iii) a certificate of a director or another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above;

(iv) such other documents as Agent, Lenders and any L/C Issuer on the Closing Date may reasonably request (including without limitation, tax identification numbers and addresses).

(d) The elements of the Collateral Requirement required to be satisfied on the Closing Date shall have been satisfied (other than in the case of any security interest in the intended Collateral or any deliverable related to the perfection of security interests in the intended Collateral (other than (i) any Collateral the security interest in which may be perfected by the filing of a UCC financing statement or the filing of short-form security agreements with the United States Patent and Trademark Office or the United States Copyright Office, or the delivery of stock certificates, (ii) the security agreement giving rise to the security interest therein, and (iii) results of recent lien searches in each relevant jurisdiction with respect to Borrowers, and such search results shall reveal no Liens on any assets of Borrowers except for Permitted Liens, that is not provided on the Closing Date after Borrowers' use of commercially reasonable efforts to do so, and the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to Borrowers evidence reasonably satisfactory to Agent that the

Liens indicated by such financing statements (or similar documents) are Permitted Liens or have been released.

(e) All Fees and expenses due and payable on or prior to the Closing Date shall have been paid (which amounts, at the option of the Company, may be offset against the proceeds of the Facilities), including, to the extent invoiced, reimbursement or payment of all reasonable out of pocket expenses (including reasonable fees, charges and disbursements of Parker, Hudson, Rainer & Dobbs LLP) required to be reimbursed or paid by Borrowers hereunder or under any Credit Document.

(f) Agent shall have received a Borrowing Base Certificate effective as of the last day of the week immediately preceding the Closing Date.

(g) No Default or Event of Default shall exist, or would result from such proposed Loan or other extension of credit or from the application of the proceeds thereof.

(h) Since the Petition Date, no event has occurred that has or could reasonably be expected to have either a Material Adverse Effect on any Borrower's business, finances, assets or prospects or on the Collateral.

(i) With respect to the issuance of any Letter of Credit on the Closing Date, each of the conditions required in connection therewith hereunder shall have been satisfied.

(j) The Court shall have entered the Interim DIP Financing Order, which is (unless otherwise consented to by the Lender Parties) a Final Order, the Interim DIP Financing shall be in full force and effect and shall not have been modified, amended or stayed, in whole or in part, after its entry without the prior written consent of Agent and Required Lenders, and each Borrower shall be in compliance with the Interim DIP Financing Order;

(k) The Court has entered an order providing for the joint administration of the Chapter 11 Cases.

(l) The Petition Date shall have occurred and each Borrower shall be a debtor and debtor-in-possession in the Chapter 11 Cases. All motions filed and First Day Orders entered by the Court in any of the Chapter 11 Cases on or prior to the Closing Date shall be in form and substance reasonably satisfactory to Agent and Required Lenders, and Agent shall be reasonably satisfied with any cash collateral arrangements applicable to any material pre-Petition Date secured obligations of Borrowers.

(m) Lender Parties shall have reviewed and approved the initial DIP Budget in final form as attached to the DIP Financing Motion.

(n) Except for the Chapter 11 Cases, no action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain or prohibit, or to obtain damages in respect of this Agreement, or which is related to or arises out of, this Agreement or any of the other Credit Documents or the consummation of the transactions contemplated hereby or thereby.

(o) No trustee or examiner having expanded powers shall have been appointed with respect to any Borrower or its property; and

(p) The Term DIP Credit Documents shall be in form and substance satisfactory to Agent, shall have been duly executed and delivered by all of the signatories thereto, shall have been

approved by the Court after notice and hearing, all provisions of the Term DIP Credit Documents are in full force and effect, and Term DIP Lenders are ready and willing to fund the Term DIP Loans in accordance with the Term DIP Credit Documents and the Financing Orders.

(q) Agent shall have received the financial information referred to in **Section 4.05(a)**.

(r) No Chapter 11 Case of any Borrower shall have been dismissed or converted to a Chapter 7 case.

(s) Agent shall have received a weekly statement of receipts and disbursements of Holdings and its Subsidiaries on a consolidated basis for the period commencing with the first full one-week period ending February 12, 2016 through the pendency of the Chapter 11 Cases, in form and substance consistent with the DIP Budget.

For purposes of determining compliance with the conditions specified in this **Section 5.02**, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to Lenders unless an officer of Agent responsible for the transactions contemplated by the Credit Documents shall have received notice from such Lender prior to the Closing Date specifying its objection thereto and such Lender shall not have made available to Agent such Lender's ratable portion of the initial Borrowing. Execution and delivery to Agent by any Lender of a counterpart of this Agreement shall be deemed confirmation by such Lender that (i) all conditions precedent in this **Section 5.02** have been fulfilled to the satisfaction of such Lender, (ii) the decision of such Lender to execute and deliver to Agent an executed counterpart of this Agreement was made by such Lender independently and without reliance on Agent or any other Lender as to the satisfaction of any condition precedent set forth in this **Section 5.02**, and (iii) all documents sent to such Lender for approval consent, or satisfaction were and are acceptable to such Lender.

ARTICLE VI AFFIRMATIVE COVENANTS

Each Borrower covenants and agrees with each Lender that unless and until Full Payment of all Obligations and Pre-Petition Obligations has occurred, unless Required Lenders shall otherwise consent in writing, such Borrower will:

Section 6.01. Existence; Businesses and Properties. (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except, in the case of a Subsidiary of a Borrower, where the failure to do so would not reasonably be expected to have a Material Adverse Effect, and except for the liquidation or dissolution of Subsidiaries if the assets of such Subsidiaries, to the extent they exceed estimated liabilities, are acquired by a Borrower or a Wholly-Owned Subsidiary of a Borrower in such liquidation or dissolution; provided, that Subsidiaries may not be liquidated into Subsidiaries that are not Borrowers and Domestic Subsidiaries may not be liquidated into Foreign Subsidiaries.

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto necessary to the normal conduct of its business and (ii) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition and

from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times (in each case except as expressly permitted by this Agreement).

Section 6.02. Insurance. (a) Maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations and cause, subject to the time periods set forth in clause (ix) of the definition of "Collateral Requirement" and Schedule 5.02(d), if applicable, Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies.

(b) With respect to any Mortgaged Properties, if at any time the area in which the Premises (as defined in the Mortgages) are located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), maintain, subject to the time periods set forth in clause (vii) of the definition of "Collateral Requirement" to the extent commercially reasonably available, flood insurance in amounts no less than that maintained by each Borrower as of the Closing Date or in such other total amount as Agent may from time to time reasonably require, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time.

(c) In connection with the covenants set forth in this **Section 6.02**, it is understood and agreed that:

(i) none of the Lender Parties or their respective Agent or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this **Section 6.02**, it being understood that (A) Borrowers shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against any of the Lender Parties or their respective Agent or employees. If, however, the insurance policies, as a matter of the internal policy of such insurer, do not provide waiver of subrogation rights against such parties, as required above, then each Borrower hereby agrees, to the extent permitted by applicable Laws, to waive its right of recovery, if any, against each Lender Party and its respective Agent and employees; and

(ii) the designation of any form, type or amount of insurance coverage by Agent under this **Section 6.02** shall in no event be deemed a representation, warranty or advice by Agent or Lenders that such insurance is adequate for the purposes of the business of any Borrower or the protection of its properties.

Section 6.03. Taxes. Pay and discharge promptly when due all material Taxes imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims which, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such Tax or Claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings, and each Borrower, as applicable, shall have set aside on its books reserves in accordance with GAAP with respect thereto.

Section 6.04. Financial Statements, Reports, etc. Furnish to Agent (which will promptly furnish such information to Lenders):

(a) within 95 days after the end of each fiscal year, a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of Borrowers and their Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such year (including segment disclosure, consistent with existing practices) and setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity shall be audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP (it being understood that the delivery by Borrowers of annual reports on Form 10-K of Borrowers and their consolidated Subsidiaries shall satisfy the requirements of this **Section 6.04(a)** to the extent such annual reports include the information specified herein);

(b) within 50 days after the end of each of the first three fiscal quarters of each fiscal year beginning with the fiscal quarter ending March 31, 2016, a consolidated balance sheet and related statements of operations and cash flows showing the financial position of Borrowers and their Subsidiaries as of the close of such fiscal quarter and the consolidated and consolidating results of its operations during such fiscal quarter and the then elapsed portion of the fiscal year (including segment disclosure, consistent with existing practices) and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, and (ii) management's discussion and analysis of significant operational and financial developments during such quarterly period, all of which shall be in reasonable detail and which consolidated and consolidating balance sheet and related statements of operations and cash flows shall be certified by a Financial Officer of Borrowers on behalf of each Borrower as fairly presenting, in all material respects, the financial position and results of operations of Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) (it being understood that the delivery by Borrowers of quarterly reports on Form 10 Q of Borrowers and their consolidated Subsidiaries shall satisfy the requirements of this **Section 6.04(b)** to the extent such quarterly reports include the information specified herein);

(c) (x) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of a Financial Officer of Borrowers certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (y) concurrently with any delivery of financial statements under paragraph (a) above, if the accounting firm is not restricted from providing such a certificate by the policies of its national office, a certificate of the accounting firm opining on or certifying such statements stating whether they obtained knowledge during the course of their examination of such statements of any Default or Event of Default (which certificate may be limited to accounting matters and disclaim responsibility for legal interpretations);

(d) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by Agent, other materials filed by any Borrower or any of their Subsidiaries with the SEC, or distributed to its stockholders generally, as applicable; provided, however, that such reports, proxy statements, filings and other materials required to be delivered pursuant to this clause (d) shall be deemed delivered for purposes of this Agreement when posted to the website of Borrowers;

(e) within 35 days after the end of each calendar month of each fiscal year beginning with the calendar month ending [●], 2016, a consolidated balance sheet and related statements of operations and cash flows showing the financial position of Borrowers and their Subsidiaries as of the close of such calendar month and the consolidated results of its operations during such calendar month

and the then elapsed portion of the fiscal year (including segment disclosure, consistent with existing practices) and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, which consolidated balance sheet and related statements of operations and cash flows shall be certified by a Financial Officer of Borrowers on behalf of each Borrower as fairly presenting, in all material respects, the financial position and results of operations of Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes);

(f) Upon the reasonable request of Agent, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (f) or **Section 6.10(f)**;

(g) Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of each Borrower, or compliance with the terms of any Credit Document, or such consolidating financial statements as in each case Agent may reasonably request (for itself or on behalf of any Lender) and (ii) prior written notice in the event that any Borrower changes its fiscal year end;

(h) In the event that (i) Holdings or any Parent Entity, as the case may be, is not engaged in any business or activity, and does not own any assets or have other liabilities, other than those incidental to its ownership directly or indirectly of the capital stock of Borrowers and the incurrence of Indebtedness for borrowed money (and, without limitation on the foregoing, does not have any Subsidiaries other than Borrowers and Borrowers' Subsidiaries and any direct or indirect parent companies of Borrowers that are not engaged in any other business or activity and do not hold any other assets or have any liabilities except as indicated above) or (ii) in connection with any reporting requirements described in paragraphs (a) and (b) of this **Section 6.04** Borrowers deliver consolidating financial information that explains, at a level of detail reasonably acceptable to Agent, the differences between the information relating to Holdings or such Parent Entity and their Subsidiaries other than Borrowers and their Subsidiaries, on the one hand, and the information relating to Borrowers and their Subsidiaries on a standalone basis, on the other hand, then such consolidated reporting at such Parent Entity's level in a manner consistent with that described in paragraphs (a) and (b) of this **Section 6.04** for Borrowers will satisfy the requirements of such paragraphs;

(i) Promptly upon request by Agent, copies of: (i) each Schedule B (Actuarial Information) to the Pre-Petition Credit Agreement to the most recent annual report (Form 5500 Series) filed with the Internal Revenue Service with respect to a Plan; (ii) the most recent actuarial valuation report for any Plan; (iii) all notices received from a Multiemployer Plan sponsor, a plan administrator or any governmental agency, or provided to any Multiemployer Plan by Holdings, a Borrower, a Subsidiary or any ERISA Affiliate, concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan or Multiemployer Plan as Agent shall reasonably request;

(j) [Reserved]

(k) Borrowing Base Certificates, at the times specified in **Section 6.14**;

(l) As soon as practicable in advance of filing with the Court or delivering to the Committee appointed in a Chapter 11 Case, if any, or to the United States Trustee for the Eastern District of Missouri, as the case may be, the Final DIP Financing Order, all other proposed orders and pleadings related to the Chapter 11 Cases, the Facility and/or any sale contemplated in accordance with **Section 6.25** hereof (all of which must be in form and substance satisfactory to Agent), any Chapter 11 Plan

and/or any disclosure statement related thereto and (ii) substantially simultaneously with the filing with the Court or delivering to the Committee appointed in any Chapter 11 Case, if any, or to the United States Trustee for the Eastern District of Missouri, as the case may be, all other notices, filings, motions, pleadings or other information concerning the financial condition of Borrowers or the Chapter 11 Cases that may be filed with the Court or delivered to the Committee appointed in any Chapter 11 Case, if any, or to the United States Trustee for the Eastern District of Missouri;

(m) no later than 5:00 p.m. on the date that is four Business Days before the end of each calendar month, an updated DIP Budget (with the first such delivery thereof on _____, 2016);

(n) no later than 5:00 p.m. on Wednesday of each week, a DIP Budget Variance Report/Reconciliation (with the first such delivery thereof on February __, 2016);

(o) Promptly upon delivery to any Term DIP Party of any report with respect to the Collateral, deliver such report to Agent; and

(p) Promptly upon delivery of the reports specified in clauses (a) – (o) above and the notices specified in **Section 6.05**, deliver such reports and notices to the Pre-Petition Agent and the Pre-Petition Lenders.

Section 6.05. Litigation and Other Notices. Furnish to Agent (which will promptly thereafter furnish to Lenders) written notice of the following promptly after any Responsible Officer of a Borrower obtains actual knowledge thereof:

(i) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(ii) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against any Borrower as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(iii) any other development specific to any Borrower that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect; and

(iv) the development of any ERISA Event that, together with all other ERISA Events that have developed or occurred, would reasonably be expected to have a Material Adverse Effect.

Section 6.06. Compliance with Laws. Comply with (a) each DIP Financing Order and all other orders entered by the Court in the Chapter 11 Cases, and (b) all Laws applicable to it or any of its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; provided, that this **Section 6.06** shall not apply to Environmental Laws, which are the subject of **Section 6.09**, or to Laws related to Taxes, which are the subject of **Section 6.03**.

Section 6.07. Maintaining Records; Access to Properties and Inspections. Maintain all financial records in accordance with GAAP and permit Agent, accompanied by any Lender which so elects, upon reasonable advance notice and at reasonable times during regular business hours, and at any

time when an Event of Default exists, to have access to, examine, audit, make extracts from or copies of, and inspect any or all of Borrowers' records, files, and books of account and the Collateral, and discuss the Borrowers' affairs with Borrowers' officers and senior management; provided that such access, examinations, audits and inspections shall be limited to two instances in any calendar year (unless an Event of Default has occurred and is continuing, in which case no such limit shall exist) and will be at Borrowers' expense. Borrowers will deliver to Agent any instrument necessary for Agent to obtain records from any service bureau maintaining records for any Borrower. Agent may, and at the direction of Required Lenders shall, at any time when an Event of Default exists, and at Borrowers' expense, make copies of all of Borrowers' books and records, or require Borrowers to deliver such copies to Agent. Upon reasonable request to senior management of Borrowers, Agent may, without expense to Agent, use such of Borrowers' respective personnel, supplies, and premises as may be reasonably necessary for maintaining or enforcing Agent's Liens. Agent shall have the right, at any time, in Agent's name or in the name of a nominee of Agent, to verify the validity, amount, or any other matter relating to the Accounts, Inventory, or other Collateral, by mail, telephone, or otherwise; provided, however, in the absence of an Event of Default, Agent agrees that it will not attempt to verify more than ten (10) Accounts each month.

Section 6.08. Use of Proceeds. All proceeds of Loans, and any Cash Collateral that is permitted to be used by Borrowers pursuant to the DIP Financing Orders, shall be used by Borrowers during the pendency of the Chapter 11 Cases in accordance with the DIP Budget (subject to any additional restrictions on the use of such proceeds and any such Cash Collateral set forth in the DIP Financing Orders), but excluding (x) payment of any Pre-Petition Term Loan Obligations or any Term DIP Obligations and (y) any payment, loan, advance, intercompany advance, transfer, or any other remittance whatsoever to any Borrower's Affiliate that is not a Borrower other than in payment for purchases of inventory in the Ordinary Course of Business of Borrowers; provided, however, in no event shall proceeds of Loans be used to pay Professional Fees or the fees and expenses of any Person incurred in connection with the assertion of or joinder in any Claim, counterclaim, action, contested matter, objection, defense or other proceeding, the purpose of which is to seek or the result of which would be to obtain any order, judgment, declaration, or similar relief (i) asserting a Claim against or seeking damages, whether under any state, federal or foreign Laws, from Agent, any Lender, the Pre-Petition Agent or any Pre-Petition Lender, or any of their respective officers, directors, consultants, Agent, attorneys or employees, on account of any alleged Claim arising on, before or after the Petition Date, including, without limitation, a Claim for lender liability or pursuant to Section 105 or Chapter 5 of the Bankruptcy Code; (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, (A) any of the Obligations or Pre-Petition Obligations, or (B) any of the Liens granted to Agent under any of the Credit Documents or to the Pre-Petition Agent under any of the Pre-Petition Credit Documents, or to either of them under the DIP Financing Orders; (iii) declaring any of the Credit Documents or Pre-Petition Credit Documents to be invalid, not binding or unenforceable in any respect; (iv) attempting to modify or restrict any of the rights or remedies granted to any of the Lender Parties under any of the Credit Documents, the DIP Financing Orders, any other order of the Court, or applicable Laws; (v) attempting to prevent, enjoin, hinder or otherwise delay Agent's or the Pre-Petition Agent's enforcement of any of the Credit Documents or the Pre-Petition Credit Documents, or any realization upon any Collateral or any Pre-Petition Collateral, as applicable (unless such enforcement or realization is in direct violation of an explicit provision in any of the DIP Financing Orders or other than to seek a determination by the Court that an Event of Default has not occurred or is not continuing); (vi) declaring any Liens granted or purported to be granted under any of the Credit Documents or Pre-Petition Credit Documents to have a priority other than the priority set forth therein or in the DIP Financing Orders; (vii) objecting to the amount or method of calculation by Agent, any Lender, the Pre-Petition Agent, or any Pre-Petition Lender of the Pre-Petition Obligations or any of the Obligations, or any accounting rendered by Agent, any Lender, the Pre-Petition Agent, or any Pre-Petition Lender with respect to any of those obligations; (viii) seeking to use the cash proceeds of any of the ABL Priority Collateral other than as expressly authorized by the DIP Financing Orders, without the prior written consent of the Pre-Petition Lenders or Lenders, as applicable;

(ix) paying any amount on account of any Claims arising before the commencement of the Chapter 11 Cases unless such payments are approved by an order of the Bankruptcy Court; or (x) after the occurrence and during the continuance of an Event of Default and delivery of written notice, paying any success, completion, back-end or similar fees. Nothing in this **Section 6.08** shall be construed to waive Agent's right to object to any requests, motions or applications made in or filed with the Court, including any applications for interim or final allowances of Professional Fees.

Section 6.09. Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other Persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case with respect to this **Section 6.09**, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.10. Further Assurances; Additional Security. (a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents and recordings of Liens in stock registries), that may be required under any applicable Laws, or that Agent may reasonably request, to satisfy the Collateral Requirement and to cause the Collateral Requirement to be and remain satisfied, all at the expense of Borrowers, and provide to Agent, from time to time upon reasonable request, evidence reasonably satisfactory to Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any asset (including any Real Property or improvements thereto or any interest therein) that has an individual fair market value (as determined in good faith by Borrowers) in an amount greater than \$500,000 is acquired by any Borrower after the Closing Date (in each case other than (x) assets constituting Collateral under a Security Document that become subject to the Lien of such Security Document upon acquisition thereof and (y) assets (if any) that are not required to become subject to Liens in favor of Agent pursuant to the Security Documents) (i) notify Agent thereof and (ii) cause such asset to be subjected to a Lien securing the Obligations (subject, as the case may be, to the Intercreditor Agreement and Permitted Liens) and take, and cause Borrowers to take, such actions as shall be necessary or reasonably requested by Agent to grant and perfect such Liens, (subject, as the case may be, to the Intercreditor Agreement and Permitted Liens), including actions described in paragraph (a) of this **Section 6.10**, all at the expense of Borrowers, subject to paragraph (g) below.

(c) (i) Furnish to Agent prompt written notice of any change (A) in any Borrower's corporate or organization name, (B) in any Borrower's identity or organizational structure or (C) in any Borrower's organizational identification number; provided, that no Borrower shall effect or permit any such change unless all filings have been made, or will have been made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral for the benefit of Secured Parties and (ii) promptly notify Agent if any material portion of the Collateral is damaged or destroyed.

(d) Within 45 days of the Closing Date (or such later date as may be agreed by Agent in its discretion), Borrowers shall execute and deliver to Agent a Deposit Account Control Agreement with respect to each Deposit Account of Borrowers in existence as of the Closing Date, other than any Exempt Deposit Account.

(e) Prior to any Borrower establishing and funding a Deposit Account following the Closing Date, Borrowers shall notify Agent thereof and execute and deliver to Agent a Deposit Account Control Agreement with respect to each such Deposit Account, other than any Exempt Deposit Account.

(f) Following the Closing Date (and subject to the time period provided for in **Section 6.10(d)**), Borrowers shall maintain effective Deposit Account Control Agreements with respect to each Deposit Account, other than Exempt Deposit Accounts, of Borrowers, at all times unless and until the Security Interest (as defined in the Collateral Agreement) with respect to such Deposit Account is released in accordance with this Agreement.

Section 6.11. [Reserved]

Section 6.12. Appraisals and Field Examinations. Borrowers shall reimburse Agent and Lenders for all reasonable costs and expenses incurred by Agent and Lenders in connection with all audits, inspections, examinations and appraisals with respect to any Borrower or Collateral as Agent shall deem appropriate in the exercise of its Reasonable Credit Judgment; provided, however, Borrowers shall only be obligated to reimburse Agent for up to 2 field examinations and up to 2 Inventory Appraisals per calendar year; and provided further that upon and during the continuance of an Event of Default, Borrowers shall be obligated to reimburse Agent for any and all field examinations and Inventory Appraisals conducted by Agent or a third party on its behalf. The foregoing fees shall be due and payable 10 days after Borrowers receive invoices therefor from Agent; provided, however, upon and during the continuance of an Event of Default, such fees shall be due and payable on demand. On the Closing Date, Borrowers shall pay to Agent all appraisal and audit fees incurred by Agent prior to the Closing Date in connection with the consummation of the transactions evidenced hereby together with all reasonable out of pocket expenses incurred by Agent in connection therewith, which fees and expenses shall be described in reasonable detail in an invoice from Agent delivered to Borrowers not less than one (1) Business Day prior to the Closing; provided that failure to provide such invoice within such time period shall not relieve Borrowers of their obligation to pay Agent for such fees and expenses. Borrowers agree to pay Agent's then standard charges for examination activities, including the standard charges of Agent's internal examination and appraisal groups (such customary charges are currently \$1,100 per day per employee for each day that an employee of Agent shall be engaged in any field examination or audit, plus all reasonable out of pocket expenses incurred in connection therewith), as well as the charges of any third party used for such purposes. In addition, Borrowers shall have the right (but not the obligation), at their expense, at any time and from time to time (but not more than once per year) to provide Agent with additional appraisals or updates thereof of any or all of the Collateral from one or more Acceptable Appraisers (as selected by Borrowers), and prepared in a form and on a basis reasonably satisfactory to Agent, in which case such appraisals or updates shall be used in connection with the determination of the Orderly Liquidation Value and the calculation of the Borrowing Base hereunder. In connection with any appraisal requested by Agent pursuant to this **Section 6.12** (unless an Event of Default has occurred and is continuing), Borrowers shall be given 20 days following such request by Agent to choose and engage the Acceptable Appraiser prior to the commencement of such appraisal. With respect to each appraisal made pursuant to this **Section 6.12** (unless an Event of Default has occurred and is continuing) after the Closing Date, (i) Agent and Borrowers shall each be given a reasonable amount of time to review and comment on a draft form of the appraisal prior to its finalization and (ii) any adjustments to the Orderly Liquidation Value or the Borrowing Base hereunder as a result of such appraisal shall become effective 20 days following the finalization of such appraisal.

Section 6.13. Collection of Accounts; Payments. Borrowers shall maintain at all times Dominion Accounts pursuant to lockbox or other arrangements acceptable to Agent and, in the case of any such Dominion Account and lockbox arrangement, with such bank as may be selected by Borrowers and be acceptable to Agent. Borrowers shall obtain a deposit account control agreement (in form and

substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank that maintains a Deposit Account of each Borrower, establishing Agent's control over and Lien in the lockbox and any such Dominion Account, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. All funds in each Dominion Account shall be immediately transferred to a controlled account designated by Borrowers (the "Primary Payment Account") and shall be applied to the Obligations at the beginning of the next Business Day in accordance with **Section 2.10** and the DIP Financing Orders. Agent and Lenders assume no responsibility to Borrowers for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank. Borrowers shall request in writing and otherwise take commercially reasonable steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If a Borrower receives cash or Payment Items with respect to any ABL Priority Collateral, or, subject to the terms of the Intercreditor Agreements, any other Collateral, it shall hold same in trust for the Pre-Petition Agent and Agent and promptly (not later than the next Business Day) deposit same into a Dominion Account. For avoidance of doubt, no Dominion Account shall constitute an Excluded Deposit Account. To expedite collection, Borrowers shall endeavor in the first instance to make collection of Borrowers' Accounts. Agent retains the right at all times during the continuance of an Event of Default to notify Account Debtors of each Borrower that Accounts have been assigned to Agent and to collect Accounts directly in its own name and to charge to Borrowers the collection costs and expenses incurred by Agent or Lenders, including reasonable attorneys' fees.

Section 6.14. Collateral Reporting. Provide, or cause to be provided, to Agent, a Borrowing Base Certificate on or before the Closing Date, and thereafter on Wednesday of each week, and for the preceding week, in form reasonably satisfactory to Agent and containing the information identified in Schedule 6.14. If any Borrower's records or reports of the Collateral required to be delivered pursuant to this Agreement or any other Credit Document are prepared by an accounting service or other agent, each Borrower hereby authorizes such service or agent to deliver such records or reports to Agent, for distribution to Lenders.

Section 6.15. Landlord and Storage Agreements. Upon the request of Agent, provide Agent with copies of: (i) any of the existing agreements, and (ii) any future agreements, between any Borrower and any landlord, warehouseman or bailee which owns any premises at which any ABL Priority Collateral may, from time to time, be kept or that otherwise may possess or handle any Collateral.

Section 6.16. Payment of Administrative Expenses. Pay and discharge as the same shall become due and payable, all its Post-Petition obligations and liabilities, including all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless being properly contested, provided that the foregoing shall not be construed to override any provisions herein or in any DIP Financing Order regarding any impermissible use of Cash Collateral or proceeds of any Loan or as a consent by any Secured Party to any surcharge of any Collateral under Section 506(c) of the Bankruptcy Code or otherwise to pay any such obligation or liability.

Section 6.17. Compliance with Terms of Leaseholds. Make all payments and otherwise perform all obligations arising after the Petition Date in respect of all leases of real property to which such Borrower is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify Agent of any default by any party with respect to such leases and cooperate with Agent in all respects to cure any such default, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect or upon rejection of such lease, subject to the rights

of Agent to object thereto, pursuant to a Final Order of the Court entered under Section 365 of the Bankruptcy Code.

Section 6.18. Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, enforce each such Material Contract in accordance with its terms, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and promptly notify Agent of any material modification of a Material Contract or termination of a Material Contract.

Section 6.19. Debtor-in-Possession Obligations. Comply in a timely manner with its obligations and responsibilities as a debtor-in-possession under the Bankruptcy Code, the Bankruptcy Rules, Local Court Rules, and any order of the Court.

Section 6.20. Milestones.

(a) Achieve each of the following milestones (as the same may be extended from time to time with the consent of Agent, the "Downstream Milestones").

(i) On the Petition Date, Borrowers shall file (i) a motion seeking approval of (A) the Term DIP Loan Facility and (B) the Facility and (ii) a motion seeking a final order, in form and substance acceptable to Agent and Required Lenders in all respects, authorizing Noranda Bauxite Limited to reject the Scherwin Contract pursuant to Section 365 of the Bankruptcy Code.

(ii) On or before the date that is 5 days after the Petition Date, the Interim DIP Financing Order shall have been entered by the Court.

(iii) On or before the date that is 15 Business Days after the Petition Date, Borrowers shall file a motion seeking approval of the Downstream Sale Process (such motion, the "Downstream Sale Motion" and such auction, to the extent necessary, the "Downstream Auction").

(iv) On or before the date that is 35 days after the Petition Date, the Final DIP Financing Order authorizing and approving the Term DIP Loan Facility and the Facility and the transactions contemplated thereby, in form and substance satisfactory to Agent and Required Lenders, and shall have been entered by the Court.

(v) On or before the date that is 45 days after the Petition Date, a Final Order, in form and substance acceptable to Agent and Required Lenders in all respects, approving the Downstream Sale Process shall have been entered by the Court.

(vi) On or before the date that is 45 days after the Petition Date, Borrowers' aluminum smelter located in New Madrid, Missouri shall have been idled.

(vii) On or before the date that is 60 days after the Petition Date, either (i) a Final Order, in form and substance acceptable to Agent and Required Lenders in all respects, shall have been entered by the Court authorizing Noranda Bauxite Limited to reject the Sherwin Contract pursuant to Section 365 of the Bankruptcy Code or (ii) a Final Order, in form and substance acceptable to Agent and Required Lenders in all respects, shall have been entered by the Court pursuant to Rule 9019 of the Bankruptcy Rules approving the Sherwin Settlement and the Sherwin Settlement shall have become effective.

(viii) On or before the date that is 60 days after the Petition Date, the Acceptable Business Plan shall have been provided to Agent and Lenders.

(ix) On or before the date that is 95 days after the Petition Date, a Final Order, in form and substance acceptable to Agent and Required Lenders in all respects (i) approving the sale of Borrowers' assets and property that comprise the Downstream Business (the "Downstream Asset Sale") and (ii) providing that the Liens and Claims of Secured Parties, Pre-Petition Secured Parties, Term DIP Parties and Pre-Petition Term Agent shall attach to the proceeds of the Downstream Asset Sale in accordance with the provisions of the Final DIP Financing Order and Intercreditor Agreement;

(x) On or before the date that is 120 days after the Petition Date, close of the sale of the Downstream Business;

(xi) On or before the date that is 90 days after the Petition Date, Borrowers shall have filed an Acceptable Chapter 11 Plan and related disclosure statement (the "Plan Filing Date"); and

(b) in the event that the Plan Filing Date occurs in accordance with clause (a)(xi), Borrowers shall comply with the following Milestones (collectively with clause (a)(v), the "Plan Milestones"):

(i) On or before the date that is 35 days after the Plan Filing Date, the Court shall have entered an order approving the disclosure statement and plan solicitation procedures each in a form acceptable to Agent and Required Lenders;

(ii) On or before the date that is 90 days after the Plan Filing Date, the Court shall have entered an order acceptable to Agent and Required Lenders confirming the Acceptable Chapter 11 Plan (the "Confirmation Order");

(iii) On the date that is the earlier of (A) 30 days after the entry of the Confirmation Order and (B) 210 days after the Petition Date, the Acceptable Chapter 11 Plan shall become effective.

(c) In the event that (i) the Plan Filing Date does not occur in accordance with clause (a)(xi) above, Borrowers shall, within 135 days of the Petition Date, file a motion seeking approval for the Upstream Sales Process which shall be reasonably acceptable to Agent and Required Lenders (such motion, the "Upstream Sale Motion" and such auction, to the extent necessary, the "Upstream Auction") or (ii) Borrowers do not comply with any of the Plan Milestones, Borrowers within 5 Business Days of such non-compliance file the Upstream Sale Motion. The Upstream Sale Motion shall contain milestones (the "Upstream Milestones") for the Upstream Sale Process that are designed to ensure consummation of the sale prior to the scheduled Maturity Date and are acceptable to Agent and Required Lenders in their reasonable discretion. The sale order that is entered by the Court approving the Upstream Sale Motion shall be acceptable to Agent and Required Lenders in their reasonable discretion and shall provide that the Liens and Claims of Secured Parties, the Pre-Petition Secured Parties, the Term DIP Parties and the Pre-Petition Term Parties shall attach to the proceeds of the Upstream Asset Sale in accordance with the provisions set forth in the Final Order and Intercreditor Agreement. For the avoidance of doubt, notwithstanding the filing of the Upstream Sale Motion, Borrowers shall not be precluded from filing and consummating an Acceptable Chapter 11 Plan prior to entry of a final sale order.

Section 6.21. DIP Budget. Comply with the terms of the DIP Budget, subject to any Permitted Variances.

Section 6.22. Term DIP Facility. Keep and maintain the borrowing facility under the Term DIP Credit Agreement in full force and effect during the full term thereof in an amount at least equal to \$35,000,000 less the aggregate amount drawn thereunder on any given date.

Section 6.23. First Day Orders. Cause all proposed “first day orders” submitted to the Court to be in accordance with and permitted by the terms of this Agreement in all respects.

Section 6.24. Consultants. Provide Agent and Lenders with reasonable access to any consultant, turnaround management, broker or financial advisory firm retained by any Borrower or its Subsidiaries in any of the Chapter 11 Cases and, if requested, copies of all retention agreements for each such consultant.

Section 6.25. Additional Collateral Covenant. Notwithstanding anything to the contrary, Borrowers shall execute and deliver to Agent, for the benefit of Secured Parties, Mortgages, deposit accounts control agreements, lien waivers and other Security Documents to the extent provided to the Term DIP Agent or executed in respect of any Term DIP Loans.

ARTICLE VII NEGATIVE COVENANTS

Each Borrower covenants and agrees with each Secured Party that unless and until Full payment of the Obligations and the Pre-Petition ABL Obligations, unless Required Lenders shall otherwise consent in writing, such Borrower will not, and will not permit any of its Material Subsidiaries to:

Section 7.01. Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness outstanding on the Petition Date and set forth on Schedule 7.01;
- (b) The Obligations, including Cash Management Obligations;
- (c) The Term DIP Obligations;
- (d) obligations (contingent or otherwise) arising under a Swap Contract approved by the Bankruptcy Court if such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates, commodity prices or foreign exchange rates (or to allow any customer to do so);
- (e) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits or property, casualty or liability insurance to any Borrower or any Subsidiary, pursuant to reimbursement or indemnification obligations to such Person, in each case in the Ordinary Course of Business;
- (f) Indebtedness of any Borrower to another Borrower or Subsidiary; provided, that, except in respect of intercompany current liabilities incurred in the Ordinary Course of Business in connection with the cash management operations and trade payables among Holdings and its Subsidiaries, Indebtedness of any Borrower to any Subsidiary shall be subordinated to, and no Borrower shall be

authorized to make or receive payment of any such Indebtedness until, the Full Payment of the Obligations and Pre-Petition Obligations;

(g) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the Ordinary Course of Business, including those incurred to secure health, safety and environmental obligations in the Ordinary Course of Business;

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the Ordinary Course of Business or other Cash Management Services in the Ordinary Course of Business; provided, that (x) such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days of notification to such Borrower of its incurrence and (y) such Indebtedness in respect of credit or purchase cards is extinguished within 60 days from its incurrence;]

(i) Indebtedness that is incurred in the Ordinary Course of Business by a Borrower or any Subsidiary during the pendency of its Chapter 11 Case not in contravention of the Bankruptcy Code or any order of the Court, is included (and does not exceed amounts shown) in the DIP Budget, and that is not secured by a Lien upon any Collateral except as expressly provide in the DIP Financing Orders;

(j) Professional Fees, fees payable to the Office of the United States Trustee, and fees payable to the Clerk of the Court;

(k) Capital Lease Obligations and purchase money Indebtedness incurred by any Borrower or any Subsidiary prior to or within 270 days after the acquisition, lease, construction, repair, replacement or improvement of the respective property (real or personal, and whether through the direct purchase of property or the Equity Interests of any Person owning such property) permitted under this Agreement in order to finance such acquisition, lease, construction, repair, replacement or improvement, in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed amounts therefor shown in the DIP Budget;

(l) Guarantees (i) by a Borrower of the Indebtedness of another Borrower permitted to be incurred under this Agreement, (ii) by a Borrower of Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Borrower to the extent such Guarantees are permitted by **Section 7.04**, (iii) by any Subsidiary that is not a Borrower of Indebtedness of another Subsidiary that is not a Borrower; provided, that Guarantees by a Borrower or any Subsidiary under this Section 7.01(k) of any other Indebtedness of a Person that is subordinated to other Indebtedness of such person shall be expressly subordinated to the Obligations

(m) Indebtedness in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade letters of credit (other than obligations in respect of other indebtedness) in the ordinary course of business;

(n) Indebtedness supported by a Letter of Credit in a principal amount not in excess of the stated amount of such Letter of Credit;

(o) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the Ordinary Course of Business;

(p) unsecured Indebtedness in respect of obligations of any Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection

with such goods and services; provided, that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms (which require that all such payments be made within 90 days after the incurrence of the related obligations) in the Ordinary Course of Business and not in connection with the borrowing of money or any Swap Contracts;

(q) Indebtedness representing deferred compensation to employees and directors of any Borrower or any Subsidiary incurred in the Ordinary Course of Business;

(r) Other Indebtedness incurred by Borrowers or any Subsidiary, other than Indebtedness under Swap Contracts; provided, that (A) at the time of the incurrence of such Indebtedness and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (B) aggregate amount of Indebtedness incurred under this clause (q), when aggregated with all other Indebtedness incurred pursuant to this clause (q), shall not exceed \$500,000 at the time of incurrence;

(s) Indebtedness consisting of obligations of Borrowers or any Subsidiary under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions or any other Investment permitted hereunder; and

(t) all premiums (if any), interest (including Post-Petition interest), fees, expenses, charges and additional or contingent interest on obligations described in paragraphs (a) through (r) above.

Section 7.02. Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any Person, including any Borrower and any Subsidiary) at the time owned by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, "Permitted Liens"):

(a) Liens in existence on the Petition Date, but only if and to the extent such Liens are permitted under the Pre-Petition Credit Documents, including Liens on the Collateral securing the Pre-Petition Term Loan Obligations subject to the terms of the Intercreditor Agreement;

(b) Liens in favor of Agent securing the Obligations;

(c) Liens in favor of the Term DIP Agent securing the Term DIP Obligations, subject to the Intercreditor Agreement;

(d) Liens granted under the DIP Financing Orders, subject to the Intercreditor Agreement;

(e) Post-Petition Liens for Taxes, assessments or other governmental charges or levies not yet due or that are being contested in compliance with **Section 6.03**;

(f) Post-Petition Liens imposed by law, such as landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the Ordinary Course of Business and securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, such Borrower shall have set aside on its books reserves in accordance with GAAP, and such Liens do not materially impair the value or use of such property or materially impair operation of the business of such Borrower;

(g) (i) pledges and deposits and other Liens made or arising Post-Petition in the Ordinary Course of Business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security Laws or regulations and deposits securing liability to insurance carriers under insurance or self insurance arrangements in respect of such obligations and (ii) Post-Petition pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Borrower, as long as such pledges and deposits and other Liens described in clauses (i) and (ii) are at all times junior in right and priority to the Liens of Agent;

(h) deposits and other customary Liens made or arising Post-Petition to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory and regulatory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred in the Ordinary Course of Business, including those incurred to secure health, safety and environmental obligations in the Ordinary Course of Business, as long as such Liens are at all times junior in right and priority to the Liens of Agent;

(i) zoning restrictions, survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way, covenants, conditions, restrictions and declaration on or with respect to the use of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the Ordinary Course of Business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of any Borrower;

(j) Post-Petition Liens securing Indebtedness permitted by **Section 7.01(k)** (limited to the assets subject to such Indebtedness), as long as such Liens are at all times junior in right and priority to the Liens of Agent;

(k) Post-Petition Liens securing judgments that do not constitute an Event of Default under **Section 8.01**, as long as such Liens are at all times junior in right and priority to the Liens of Agent;

(l) Liens on Real Property or any improvement thereon disclosed by the title insurance policies delivered on or subsequent to the Closing Date and pursuant to **Section 6.10**;

(m) any interest or title of a lessor or sublessor under any leases or subleases entered into by any Borrower in the Ordinary Course of Business of such Borrower;

(n) Post-Petition Liens that are contractual rights of set off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of any Borrower to permit satisfaction of overdraft or similar obligations incurred in the Ordinary Course of Business of any Borrower, or (iii) relating to purchase orders and other agreements entered into with customers of any Borrower in the Ordinary Course of Business of such Borrower;

(o) Post-Petition Liens arising solely by virtue of any statutory or common law provision relating to bankers' Liens, rights of setoff or similar rights, as long as such Liens, to the extent attached to any ABL Priority Collateral, are at all times junior in right and priority to the Liens of Agent;

(p) Post-Petition Liens securing obligations in respect of trade related letters of credit or bank guarantees permitted under **Section 7.01(g)** or **(m)** and covering the goods (or the documents of title in respect of such goods) financed by such letters of credit or bank guarantees and the proceeds and products thereof, as long as such Liens are at all times junior in right and priority to the Liens of Agent;

(q) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted Post-Petition to any Person in the Ordinary Course of Business not interfering in any material respect with the business of any Borrower;

(r) Post-Petition Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(s) Post-Petition Liens arising under applicable Laws in the Ordinary Course of Business of any Borrower that are at all times junior in right and priority to the Liens in favor of Agent;

(t) the prior rights of consignees and their lenders under consignment arrangements entered into with a Borrower in the Ordinary Course of Business of such Borrower;

(u) Liens arising from precautionary Uniform Commercial Code financing statements or consignments entered into in connection with any transaction otherwise permitted under this Agreement, as long as such Liens are at all times junior in right and priority to the Liens of Agent;

(v) Post-Petition Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit, bank guarantee or bankers' acceptance issued or created for the account of any Borrower or any Subsidiary in the Ordinary Course of Business; provided, that such Lien secures only the obligations of such Borrower or such Subsidiary in respect of such letter of credit or bank guarantee to the extent permitted under **Section 7.01**;

(w) Post-Petition Liens securing insurance premiums financing arrangements, provided, that such Liens are limited to the applicable unearned insurance premiums; and

(x) Post-Petition Liens on deposits securing Swap Contracts permitted under **Section 7.01(d)** not to exceed \$500,000, as long as such Liens are at all times junior in right and priority to the Liens of Agent.

Section 7.03. [Reserved]

Section 7.04. Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with any Person, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, an "Investment"), any other Person, except:

(a) the Transactions;

(b) Investments in existence on the Petition Date;

(c) Intercompany loans permitted hereunder, provided that each such loan or advance is in an amount and for a purpose permitted under the DIP Budget and is expressly made subordinated in right of payment to both the Obligations and the Pre-Petition Obligations;

(d) Permitted Investments and Investments that were Permitted Investments when made;

(e) Investments arising out of the receipt by a Borrower or any Subsidiary of non-cash consideration for a 363 Sale of assets permitted under **Section 7.05**;

(f) loans and advances to officers, directors, employees or consultants of a Borrower or any Subsidiary (i) in the Ordinary Course of Business of such Borrower not to exceed \$500,000 and (ii) in respect of payroll payments and expenses in the Ordinary Course of Business of such Borrower;

(g) accounts receivable, security deposits and prepayments arising and trade credit granted in the Ordinary Course of Business of a Borrower and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the Ordinary Course of Business of a Borrower;

(h) Swap Contracts approved by the Court and permitted hereunder;

(i) Investments resulting from pledges and deposits under **Sections 7.02(g), (h), (k), and (r)**;

(j) intercompany loans between Subsidiaries that are not Borrowers and Guarantees by such Subsidiaries to the extent permitted by **Section 7.01(l)**;

(k) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the Ordinary Course of Business of a Borrower or Investments acquired by any Borrower as a result of a foreclosure by such Borrower or any of its Subsidiaries with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(l) Guarantees by a Borrower or any Subsidiary of operating leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case entered into by a Borrower or any Subsidiary prior to the Closing Date in the Ordinary Course of Business of such Borrower or Subsidiary;

(m) Investments consisting of Restricted Payments permitted under **Section 7.07**;

(n) Investments consisting of the licensing or contribution of intellectual property licenses pursuant to joint marketing arrangements with other Persons; and

(o) Guarantees permitted under **Section 7.01** (except to the extent such Guarantee is expressly subject to this **Section 7.04**).

Section 7.05. Disposition of Assets. Make any disposition of assets except (i) sales of Inventory in the Ordinary Course of Business of any Borrower or any Subsidiary; (ii) sales or other dispositions of Term Priority Collateral consented to by Term DIP Parties; (iii) dispositions of ABL Priority Collateral that are consented to in writing by Agent and Required Lenders and are authorized by the Court after notice and hearing; (iv) the rejection pursuant to Section 365 of the Bankruptcy Code of unexpired leases and executory contracts that are consented to in writing by Agent and are authorized by the Court after notice and hearing; (v) Investments permitted by **Section 7.04**, Permitted Liens permitted by **Section 7.02**, and Restricted Payments permitted by **Section 7.07**; (vi) the compromise, settlement and

collection of receivables in the Ordinary Course of Business of Borrowers or in bankruptcy or other proceedings concerning the other account party thereon and not as part of an accounts receivable financing transaction; and (vii) leases, licenses (on a non-exclusive basis with respect to intellectual property), or subleases or sublicenses (on a non-exclusive basis with respect to intellectual property) of any real or personal property in the Ordinary Course of Business of Borrowers and to the extent not consisting of any ABL Priority Collateral. Notwithstanding anything to the contrary contained in this **Section 7.05** or **Section 7.06**, no sale, transfer or other disposition of assets shall be permitted by this **Section 7.05** or **Section 7.06** unless such disposition is for fair market value (as determined in good faith by such Borrower), or if not fair market value, the shortfall is permitted as an Investment under **Section 7.04**.

Section 7.06. Mergers, Consolidations, Sales of Assets. Merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (whether now owned or hereafter acquired), except pursuant to a 363 Sale consented to by Agent and Required Lenders and approved by the Court.

Section 7.07. Restricted Payments. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any Subsidiary to purchase or acquire) any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, "Restricted Payments"); provided, however, that:

(a) any Subsidiary of a Borrower may make Restricted Payments to a Borrower; and

(b) Subject to the approval of the Court and in accordance with the Bankruptcy Court orders, each Borrower may make Restricted Payments to Holdings in respect of (i) such Borrower's allocable share of overhead, legal, accounting and other professional fees and expenses of Holdings, consistent with past practices, (ii) franchise Taxes or similar Taxes and fees and expenses necessary to maintain Holdings' existence and ownership of Borrowers, (iii) payments permitted by **Section 7.08(b)**, (iv) the portion (which shall be 100% for so long as Holdings owns no assets other than the Equity Interests in Borrowers or Holdings) of the tax liability due in each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated returns for the relevant jurisdiction of Holdings attributable to Borrowers or their Subsidiaries, and (v) customary salary and other benefits payable to, and indemnities provided on behalf of, officers and employees of Holdings, in each case in order to permit Holdings to make such payments; provided, that in the case of clauses (i) and (ii), the amount of such Restricted Payments shall not exceed the portion of any amounts referred to in such clauses (i), (ii) and (iii) that are allocable to Borrowers and their Subsidiaries (which shall be 100% for so long as Holdings owns no assets other than the Equity Interests in Borrowers or Holdings).

Section 7.08. Transactions with Affiliates.

(a) Subject to any required Court approvals, sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates or any known direct or indirect holder of 10% or more of any class of Equity Interests of a Borrower in a transaction involving aggregate consideration in excess of \$500,000, unless such transaction is (i) otherwise expressly permitted (or required) under this Agreement or (ii) upon terms no

less favorable to such Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate and is approved by the Court to the extent such approval is required. For purposes of this **Section 7.08**, any transaction with any Affiliate or any such 10% holder shall be deemed to have satisfied the standard set forth in clause (ii) of the immediately preceding sentence if such transaction is approved by a majority of the disinterested members of the Board of Directors of such Borrower.

(b) The foregoing paragraph (a) shall not prohibit, to the extent otherwise permitted under this Agreement and approved by the Court (to the extent such approval is required):

(i) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Borrower and its Subsidiaries in the Ordinary Course of Business of such Borrower and Subsidiaries and consistent with past practices;

(ii) transactions pursuant to the DIP Financing Orders, the Credit Documents and permitted transactions, agreements and arrangements in existence on the Closing Date and set forth on Schedule 7.08 or any amendment thereto to the extent such amendment is not adverse to the Lenders when taken as a whole in any material respect and other transactions, agreements and arrangements described on Schedule 7.08;

(iii) Restricted Payments permitted under **Section 7.07**;

(iv) transactions with Wholly Owned Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the Ordinary Course of Business of such Borrower and in a manner consistent with past practice;

(v) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the Ordinary Course of Business of a Borrower;

(vi) without duplication of any amounts otherwise paid with respect to Taxes, payments by Holdings (and any Parent Entity), Borrowers and their Subsidiaries pursuant to any Pre-Petition tax-sharing agreements among Holdings (and any such Parent Entity), Borrowers and their Subsidiaries, on customary terms and consistent with past practices, that require each party to make payments when such taxes are due or refunds received of amounts equal to the income tax liabilities and refunds generated by each such party calculated on a separate return basis and payments to the party generating tax benefits and credits of amounts equal to the value of such tax benefits and credits made available to the group by such party;

(vii) the provision to Subsidiaries of cash management, accounting and other overhead services in the Ordinary Course of Business of a Borrower, consistent with Past practices and undertaken in good faith (as certified in an officer's certificate executed by a Responsible Officer of Borrowers) and not for the purpose of circumventing any covenant set forth in this Agreement;

(viii) intercompany transactions undertaken in good faith (as certified in an officer's certificate executed by a Responsible Officer of Borrowers) for the purpose of improving the consolidated tax efficiency of Borrowers and their Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement, provided that such transactions do not result in any Default or Event of Default; or

(ix) transactions with Metals USA Holdings Corp., Berry Plastics Group, Inc. or any subsidiary thereof on terms consistent with past practice prior to the Transactions.

Section 7.09. Business of Borrowers and Their Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by any of them on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar or complementary thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

Section 7.10. Modifications Governing Documents. (a) Amend or modify in any manner, or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to Lenders taken as a whole (as determined in good faith by such Borrower)), the articles or certificate of incorporation, bylaws, limited liability company operating agreement, partnership agreement or other organizational documents of such Borrower or any of its Subsidiaries.

(b) Permit any Material Subsidiary of a Borrower to enter into any agreement or instrument that by its terms restricts the payment of dividends or distributions or the making of cash advances to such Borrower, except, in each case, restrictions imposed by applicable Laws.

Section 7.11. Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Holdings, Borrowers and their Subsidiaries.

Section 7.12. Accounting Changes. Make any significant change in accounting treatment or reporting practices, except as may be permitted or required by GAAP and/or applicable requirements of the SEC, or establish a fiscal year different from the Fiscal Year, unless such Borrower has notified Agent of any such change and complied with all disclosure and other requirements of applicable Laws.

Section 7.13. Amendments to Certain Debt.

(a) (i) Amend or modify, or permit the amendment or modification of, any provision of Material Indebtedness, or any agreement, document or instrument evidencing or relating thereto or (ii) amend, supplement, or otherwise modify any Pre-Petition Term Loan Document other than amendments or modifications made in accordance with the Intercreditor Agreement and authorized by a Final Order of the Court.

(b) Amend, supplement or otherwise modify any Term DIP Credit Document except to the extent not prohibited under the Intercreditor Agreement and (to the extent required) authorized by a Final Order of the Court.

Section 7.14. Restrictions on Payment of Term Loan Obligations. Make any payment (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) in respect of any Pre-Petition Term Loan Obligations or Term DIP Obligations from the proceeds of the ABL Priority Collateral or Loans until Full Payment of the Obligations and the Pre-Petition Obligations.

Section 7.15. Employee Plans. Become party to any Multiemployer Plan or Foreign Plan, other than any in existence on the Petition Date.

Section 7.16. Modifications to DIP Financing Orders. Seek or consent to any amendment, supplement or any other modification of any of the terms of the DIP Financing Orders after such orders are entered by the Court without the prior written consent of Agent (and, with respect to any material change, Required Lenders).

Section 7.17. Filing of Motions and Applications. Without the prior written consent of Agent (and with respect to any material change or modification, the Required Lenders), apply to the Court for, or join in or support any motion or application seeking, authority to (a) take any action that is prohibited by the terms of any of the Credit Documents or the DIP Financing Orders, (b) refrain from taking any action that is required to be taken by the terms of any of the Credit Documents or the DIP Financing Orders, or (c) permit any Indebtedness or Claim to be pari passu with or senior to any of the Obligations, except as expressly stated in the DIP Financing Orders.

Section 7.18. Superpriority Claim. Incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the Claims of Agent and Lenders against Borrowers, except as expressly stated in the DIP Financing Orders.

Section 7.19. Use of Proceeds. Use any proceeds of Loans or Cash Collateral for a purpose that is not specifically permitted by this Agreement and the DIP Financing Orders and set forth in the DIP Budget.

Section 7.20. DIP Budget. Amend or modify the DIP Budget without the prior written consent of Agent and Required Lenders.

Section 7.21. Chapter 11 Plan. Pursue or support the confirmation of any Chapter 11 Plan proposed for any Borrower in the Chapter 11 Cases other than an Acceptable Chapter 11 Plan.

Section 7.22. Minimum Liquidity. Permit Liquidity on any date to be less than (i) \$5,000,000 or (ii) after a 363 Sale is consummated with a resulting work force reduction and Borrowers have certified to Agent the highest aggregate amount of Borrowers' and their respective Subsidiaries' weekly payroll and payroll taxes following such work force reduction, the greater of \$2,500,000 or the highest aggregate weekly amount of such payroll and payroll taxes. As used herein, the term "Liquidity" shall mean, at any time, the sum of (x) Availability at such time, (y) the maximum amount that is available to be borrowed under the Term DIP Facility at such time, and (z) the aggregate amount of Borrowers' cash on hand that is available for their use pursuant to the DIP Financing Order then in effect (other than cash then required to be turned over to Agent for payment of any Obligations, Pre-Petition Obligations, Pre-Petition Term Loan Obligations or Term DIP Obligations).

ARTICLE VIII EVENTS OF DEFAULT

Section 8.01. Events of Default. Upon or after the occurrence of any of the following events (each, an "Event of Default"):

(a) any representation or warranty made or deemed made by any Borrower herein or in any other Credit Document or any certificate or document delivered pursuant hereto or thereto shall prove to have been false or misleading in any material respect when so made or deemed made;

(b) default shall be made in the payment of any principal of any Loan or any L/C Obligation or the deposit of any funds as Cash Collateral in respect of L/C Obligations when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any L/C Obligation or in the payment of any Fee or any other amount (other than an amount referred to in (b)

above) due under any Credit Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of 5 Business Days;

(d) default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in **Section 6.01(a), 6.05(i), 6.08 or 6.10(d)** or in **Article VII**;

(e) default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in any Credit Document (other than those specified in paragraphs (b), (c) and (d) above) and such default shall continue unremedied for a period of (i) 15 days or (ii) 5 Business Days in the case of any covenant, condition or agreement contained in **Section 6.07, 6.12, 6.13 or 6.14** after notice thereof from Agent to such Borrower; provided, however, that such notice and opportunity to cure provisions shall not apply in the case of any failure to perform, keep or observe any such covenant which is not capable of being cured or which is a willful breach by any Borrower;

(f) (i) any Borrower or any Subsidiary thereof (A) fails to make payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and beyond any applicable grace period, regardless of amount, in respect of the Term DIP Obligations or any Material Indebtedness (to the extent that the holder(s) of such Material Indebtedness is not stayed from exercising any remedies to allow enforced collection of such Material Indebtedness), (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition shall exist, under any agreement or instrument relating to the Term DIP Obligations, if the effect of such failure, event or condition (giving effect to any applicable grace period) is to cause, or to permit the holder or holders or beneficiary or beneficiaries of the Term DIP Obligations (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, the Term DIP Obligations to be declared to be due and payable prior to its stated maturity or (C) shall be required by the terms of the Term DIP Obligations to offer to prepay or repurchase such Term DIP Obligations (or any portion thereof) prior to the stated maturity thereof; (ii) notwithstanding the Intercreditor Agreement, the Term DIP Documents shall be amended, or the Term DIP Obligations are refinanced, without the prior written consent of Required Lenders; or (iii) there occurs under any Swap Contract or Swap Obligation (other than as a result of the Chapter 11 Cases) an Early Termination Date (as defined in such Swap Contract) resulting from any event of default under such Swap Contract as to which any Borrower or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) and the Swap Termination Value owed by such Borrower or any Subsidiary thereof as a result thereof is greater than \$500,000; provided that this clause (f) shall not apply to secured Indebtedness that becomes due, or which any Borrower or any Subsidiary thereof shall be required to prepay or repurchase, as a result of the sale or transfer (including by way of condemnation or casualty) of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness.

(g) there shall have occurred a Change in Control;

(h) there shall occur any default or event of default on the part of any Borrower under any Post-Petition agreement, document or instrument to which such Borrower is a party or by which such Borrower or any of its Properties is bound, creating or relating to any Material Indebtedness (other than the Obligations or the Term DIP Obligations) if the payment or maturity of such Indebtedness may be accelerated in consequence of such event of default or demand for payment of such Indebtedness may be made;

(i) any loss, theft, damage or destruction of any of the Inventory not fully covered (subject to such deductibles as Agent shall have permitted) by insurance if the amount not covered by insurance exceeds, for any such loss, theft, damage or destruction occurring prior to the closing of the sale

of the Downstream Business, \$2,000,000, and, for any such loss, theft, damage or destruction occurring thereafter, \$250,000;

(j) there shall occur any event or condition that has had or could reasonably be expected to have a Material Adverse Effect;

(k) there shall occur a cessation of a substantial part of the business of any Borrower for a period which may be reasonably expected to have a Material Adverse Effect other than as a result of a 363 Sale; or any Borrower shall suffer the loss or revocation of any license or permit now held or hereafter acquired by such Borrower which is necessary to the continued or lawful operation of its business; or any Borrower shall be enjoined, restrained or in any way prevented by court, governmental or administrative order from conducting all or any material part of its business affairs for a period which may be reasonably expected to have a Material Adverse Effect; or any material lease or agreement pursuant to which any Borrower leases or occupies any premises on which any Collateral is located shall be canceled or terminated prior to the expiration of its stated term and such cancellation or termination has had or could reasonably be expected to have a Material Adverse Effect; or any material part of the Collateral shall be taken through condemnation or the value of such Collateral in excess of \$1,000,000 shall be materially impaired through condemnation and, in either case, Borrowers shall not have received compensation in the amount of the value of such Collateral.

(l) the failure by any Borrower or any Subsidiary to pay one or more final judgments aggregating in excess of \$1,000,000 (to the extent not covered by insurance or to the extent that payment thereof is not stayed in the Chapter 11 Cases), which judgments are not discharged or effectively waived or stayed for a period of 30 consecutive days, to the extent not covered by insurance or to the extent that payment thereof is not stayed in the Chapter 11 Cases;

(m) a trustee shall be appointed by a United States district court to administer any Plan, (ii) an ERISA Event or ERISA Events shall have occurred with respect to any Plan or Multiemployer Plan, (iii) the PBGC shall institute proceedings (including giving notice of intent thereof) to terminate any Plan or Plans, (iv) Holdings, any Borrower or any Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, (v) Holdings, any Borrower or any Subsidiary shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan; and in each case in clauses (i) through (v) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect;

(n) A Borrower or any senior officer is criminally indicted or convicted for (i) a felony committed in the conduct of any Borrower's business, or (ii) violating any state or federal Laws (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act), in each case that could lead to forfeiture of any material property or any Collateral.

(o) If (i) the Obligations shall at any time fail to constitute "Senior Debt," "Designated Senior Debt" or any similar designation under and as defined in any agreement or instrument governing any Indebtedness that is subordinated to the Obligations or (ii) the subordination provisions of any agreement or instrument governing any Indebtedness in a principal amount in excess of \$250,000 that is subordinated to the Obligations shall for any reason (other than as a result of any action or inaction of Agent or any Lender) be revoked or invalidated, or otherwise cease to be in full force and effect, unless such Indebtedness would otherwise be permitted to be incurred as "Senior Debt" at such time, or any Borrower shall contest in any manner the validity or enforceability thereof.

(p) Except as otherwise consented to by Required Lenders, any Borrower shall fail to comply in any material respect with any of the provisions of the DIP Financing Orders; an order of the Court shall be entered providing for a change in venue with respect to any Chapter 11 Case other than with regard to Jamaica, and such order shall not be reversed or vacated within 60 days after its entry; a trustee shall be appointed in any of the Chapter 11 Cases; a responsible officer or an examiner shall be appointed in any of the Chapter 11 Cases with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7, or the filing by any Borrower (or the failure by a Borrower to oppose the filing by others) of a motion seeking such relief; any Borrower shall make a payment on account of any Pre-Petition Indebtedness other than in accordance with an order of the Court and permitted hereunder; the Court shall enter an order terminating the exclusive right of any Borrower to file a Chapter 11 Plan; any Borrower shall obtain Court approval of a disclosure statement for a Chapter 11 Plan other than an Acceptable Chapter 11 Plan or a Confirmation Order shall be entered with respect to a Chapter 11 Plan (regardless of the proponent of such Chapter 11 Plan) if such Chapter 11 Plan is not an Acceptable Chapter 11 Plan; Borrowers shall enter into an agreement for, or shall file (or support or fail to oppose) a motion seeking, or the Court shall enter, an order authorizing, a sale of all or substantially all of Borrowers' assets for a cash price or other terms that will not result in Full Payment of the Obligations and the Pre-Petition ABL Obligations at the closing of such sale unless the terms are otherwise acceptable to Agent and Required Lenders in their sole and absolute discretion; any Borrower shall file a motion seeking authority to consummate a sale of assets of such Borrower outside the Ordinary Course of Business (other than any such sale of assets that is permitted by the Credit Documents) having a value in excess of \$500,000, or any sale of any part of the Collateral pursuant to Section 363 of the Bankruptcy Code, in each case without Agent's and Required Lenders' consent; without the prior written consent of Agent and Required Lenders, any Borrower shall file a motion to alter, amend, stay, vacate, supplement, modify, or reconsider, in any respect, either of the DIP Financing Orders after entry by the Court or either of the DIP Financing Orders is amended, vacated, stayed, reversed or otherwise modified, whether on appeal or otherwise; the Court shall enter an order granting any Person, other than Agent, relief from the automatic stay to permit foreclosure on or repossession of any material assets of any Borrower or any ABL Priority Collateral or to permit the commencement or continuation of Pre-Petition litigation against any Borrower for any purpose other than to liquidate the amount of a disputed Claim involving potential liability not covered by insurance and in excess of \$500,000 in the aggregate; an order shall be entered for the substantive consolidation of the Estate of any Borrower with any other Person, unless such Person is another Borrower, and such order granting substantive consolidation provides that the assets of such Borrower shall remain subject to the Liens of Agent and the Pre-Petition Agent securing the Obligations and the Pre-Petition ABL Obligations, respectively; any order is entered prohibiting or otherwise unduly restricting, or the Court shall prohibit or otherwise unduly restrict, the ability of Pre-Petition Lenders to credit bid the Pre-Petition Obligations outstanding under the Pre-Petition Credit Documents; the Facility shall cease to be in full force and effect, the Court shall declare the Facility to be null and void, any Borrower shall contest the validity or enforceability of the Facility, any Borrower shall deny in writing that such Borrower has any further liability or obligation under the Facility (other than as a result of Full Payment), or Lenders shall cease to have the benefit of the Liens granted by either of the DIP Financing Orders (other than as a result Full Payment); an order shall be entered by the Court avoiding or requiring disgorgement by Agent or any Lender of any amounts received in respect of the Obligations; any Borrower shall not have sufficient Availability, together with unused commitments under the Term Credit Documents, for a period of 30 consecutive days to pay, or shall otherwise fail to pay as and when due and payable, all costs and expenses of administration that are incurred by such Borrower in the Chapter 11 Cases, other than fees and expenses covered by the Carve-Out; a Borrower shall file any motion or other request with the Court seeking authority to use any cash proceeds of any ABL Priority Collateral or to obtain any financing under Section 364(d) of the Bankruptcy Code secured by a priming Lien, or Lien of equal priority with Agent's Liens, upon any ABL Priority Collateral, in each case without Agent's prior written consent;

except as permitted in the DIP Financing Orders, the Court enters any order in any of the Chapter 11 Cases granting to any Person a Superpriority Claim or Lien *pari passu* with or senior to that granted to Agent under the DIP Financing Orders; any Borrower shall file any action, suit or other proceeding or contested matter challenging the validity, perfection or priority of any Liens of Agent securing the Obligations or any Liens of the Pre-Petition Agent securing the Pre-Petition Obligations, or the validity or enforceability of any of the Credit Documents or Pre-Petition Credit Documents, or asserting any Avoidance Actions against either of Agent, any Lender, the Pre-Petition Agent or any Pre-Petition Lender, or seeking to recover any monetary damages from either of Agent, any Lender, the Pre-Petition Agent or any Pre-Petition Lender; any Borrower shall file a motion or other pleading seeking relief that, if granted, could reasonably be expected to result in the occurrence of an Event of Default (unless such relief, if granted (or the relevant transaction) would result in Full Payment of the Obligations and the Pre-Petition Obligations immediately upon consummation of the matter addressed by such motion or pleading, whether pursuant to a Chapter 11 Plan or otherwise); or without Agent's consent and except following a 363 Sale, any Borrower discontinues or suspends all or any material part of its business operations or commences an orderly wind-down or liquidation of a material portion of its business.

(q) there shall occur any event of default on the part of any Borrower or any Subsidiary under any Term DIP Credit Document; provided, however, that, in the event such default or event of default is waived by the Term DIP Agent and the requisite Term DIP Lenders (and Agent is provided with a copy of the writing by the Term DIP Agent confirming such waiver) and such default or event of default is not otherwise a Default or Event of Default hereunder except by operation of this **Section 8.01**, such event of default shall not constitute an Event of Default hereunder.

(r) any Credit Document shall for any reason be asserted in writing by any Borrower not to be a legal, valid and binding obligation of any party thereto, any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to Borrowers and their Subsidiaries on a consolidated basis shall cease to be, or shall be asserted in writing by a Borrower not to be, a valid and perfected security interest (perfected as or having the priority required by this Agreement or the relevant Security Document and subject to such limitations and restrictions as are set forth herein and therein) in the securities, assets or properties covered thereby, except to the extent that any such loss of perfection or priority results from the limitations of foreign Laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or from the failure of Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Agreement or to file Uniform Commercial Code continuation statements or take the actions described on Schedule 4.04 and except to the extent that such loss is covered by a lender's title insurance policy and Agent shall be reasonably satisfied with the credit of such insurer;

(s) The Intercreditor Agreement or any provision thereof shall cease to be in full force and effect (except in accordance with its terms), or any Borrower or Pre-Petition Term Loan Agent party thereto shall deny or disaffirm their respective obligations thereunder or default in the due performance or observance of any term, covenant or agreement on their part to be performed or observed pursuant to the terms thereof;

(t) A Borrower or any of its Affiliates shall challenge or contest in any action, suit or proceeding the validity or enforceability of any of the Credit Documents, the legality, validity or enforceability of any of the Obligations, or the perfection or priority of any Lien granted to Agent, or any of the Credit Documents ceases to be in full force or effect for any reason other than a full or partial waiver or release by Agent and Lenders in accordance with the terms hereof;

(u) an order in the Chapter 11 Cases shall be entered (i) charging any of the Collateral under Section 506(c) of the Bankruptcy Code against Lenders or (ii) limiting the extension

under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Borrower after the Petition Date, or the commencement of other actions that is materially adverse to Agent, Lenders or their respective rights and remedies under the Facility in any of the Chapter 11 Cases or inconsistent with any of the Credit Documents; or

(v) if the Final DIP Financing Order does not include a waiver, in form and substance satisfactory to Agent and Required Lenders, of (i) the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code and (ii) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Borrower after the Petition Date;

then, and in every such event, and at any time thereafter during the continuance of such event, Agent, subject to any notice requirement in the DIP Financing Orders (the "Default Notice Requirement"), and with the automatic stay provisions of Section 362 of the Bankruptcy Code being automatically vacated and modified as provided in the DIP Financing Orders, including to the extent necessary to permit Agent to exercise its rights and remedies without further order of the Court, may (and at the written request of Required Lenders shall) take any or all of the following actions, at the same or different times:

(a) terminate, reduce or condition any Commitments (and any obligations to make L/C Credit Extensions);

(b) declare the Loans and L/C Obligations then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and the L/C Obligations so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of Borrowers accrued hereunder and under any other Credit Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrowers, anything contained herein or in any other Credit Document to the contrary notwithstanding;

(c) require Borrowers to Cash Collateralize L/C Obligations, Cash Management Obligations and other Obligations that are contingent or not yet due and payable, and, if Borrowers fail promptly to deposit such Cash Collateral, Agent may advance the required Cash Collateral as Revolving Facility Loans (whether or not an Out-of-Formula Condition exists or is created thereby, or the conditions in **Section 5.1** are satisfied); provided, however, that no Lender shall be required to fund any such Revolving Facility Loan that would cause such Lender's Revolving Facility Exposure to exceed its Revolving Facility Commitment. Any such deposit or advance shall be held by Agent as Cash Collateral to fund future payments with respect to any L/C Obligations. At such time as the L/C Obligations have been paid or terminated and all Letters of Credit have been drawn upon or expired, any amounts remaining in such reserve shall be applied against any outstanding Obligations, or, if all Obligations have been indefeasibly paid in full, returned to Borrowers;

(d) exercise all of the rights and remedies of a secured party under the UCC or under other applicable Laws, and all other legal and equitable rights to which Agent may be entitled under any of the Credit Documents and applicable Laws, all of which rights and remedies shall be cumulative and shall be in addition to any other rights or remedies contained in this Agreement or any of the other Credit Documents or authorized by applicable Laws, and none of which shall be exclusive;

(e) collect all amounts at any time payable to a Borrower from any Account Debtor or other Person at any time indebted to such Borrower;

(f) take immediate possession of any of the ABL Priority Collateral, and to (i) require Borrowers to assemble the Collateral, at Borrowers' expense, and make it available to Agent at a place designated by Agent which is reasonably convenient to both parties, and (ii) enter any premises where any of the Collateral shall be located and to keep and store the Collateral on said premises until sold (and if said premises be the Property of a Borrower, then such Borrower agrees not to charge Agent for storage thereof);

(g) sell or otherwise dispose of all or any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale or sales, with such notice as may be required by applicable Laws, in lots or in bulk, for cash or on credit, all as Agent, in its discretion, may deem advisable. Each Borrower agrees that any requirement of notice to Borrowers of any proposed public or private sale or other disposition of Collateral by Agent shall be deemed reasonable notice thereof if given at least 10 days prior thereto, and each such sale may be at such location or locations as Agent may designate in said notice. Agent shall have the right to conduct such sales on any Borrower's premises, without charge therefor, and such sales may be adjourned from time to time in accordance with applicable Laws. Administrative shall have the right to sell, lease or otherwise dispose of the Collateral, or any part thereof, for cash, credit or any combination thereof, and Agent may purchase all or any part of the Collateral at public or, if permitted by Laws, private sale and, in lieu of actual payment of such purchase price, may set off the amount of such price against the Obligations. The proceeds realized from any sale or other disposition of any Collateral may be applied, after allowing 2 Business Days for collection, first to any Extraordinary Expenses incurred by Agent, second to interest accrued with respect to any of the Obligations; and third, to the principal balance of the Obligations. If any deficiency shall arise, Borrowers shall remain jointly and severally liable to Agent and Lenders therefor;

(h) after obtaining relief from the automatic stay, the right to the appointment of a receiver, without notice of any kind whatsoever, to take possession of all or any portion of the Collateral and to exercise such rights and powers as the court appointing such receiver shall confer upon such receiver; and

(i) exercise all rights and remedies granted to it under any Credit Document and all its rights and remedies under any applicable Laws or in equity;

Provided, however, that that Agent shall not exercise any rights or remedies prior to the expiration or satisfaction of the Default Notice Requirement, other than to contest any assertion by any interested party that no Event of Default has occurred or is in existence and other than to cease funding Revolving Facility Loans, issuing Letters of Credit or otherwise extending any credit to any Borrower under the Facility.

Section 8.02. License. Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person), after the occurrence and during the continuance of an Event of Default, any or all intellectual property of each Borrower, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Borrower's rights and interests under or with respect to intellectual property shall inure to Agent's benefit.

Section 8.03. Remedies Cumulative; No Waiver; Disclosures to Committee. All covenants, conditions, provisions, warranties, guaranties, indemnities, and other undertakings of Borrowers contained in this Agreement and the other Credit Documents, or in any document referred to herein or contained in any agreement supplementary hereto or in any schedule or contained in any other agreement between Agent or any Lender and any or all Borrowers, heretofore, concurrently, or hereafter entered

into, shall be deemed cumulative to and not in derogation or substitution of any of the terms, covenants, conditions, or agreements of Borrowers herein contained. The rights and remedies of Agent and Lenders under this Agreement and the other Credit Documents shall be cumulative and not exclusive of any rights or remedies that either of Agent or any Lender would otherwise have. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations. Neither (i) the failure or delay of either of Agent or any Lender to require strict performance by any Borrower of any provision of any of the Credit Documents or to exercise or enforce any rights, Liens, powers, or remedies under any of the Credit Documents or applicable Laws or with respect to any Collateral, (ii) the making of any ABL Revolving Facility Loan during a Default, Event of Default or other failure to satisfy any conditions precedent, nor (iii) acceptance by either of Agent or any Lender of any payment or performance by a Borrower under any Credit Documents in a manner other than that specified therein shall not operate as a waiver of such performance, Liens, rights, powers and remedies or a course of dealing, but all such requirements, Liens, rights, powers, and remedies shall continue in full force and effect until all Revolving Facility Loans and all other Obligations owing or to become owing from any Borrower to Agent and Lenders shall have been fully satisfied. None of the undertakings, agreements, warranties, covenants and representations of Borrowers contained in this Agreement or any of the other Credit Documents and no Event of Default by any Borrower under this Agreement or any other Credit Documents shall be deemed to have been suspended or waived by either of Agent or any Lender, unless such suspension or waiver is by an instrument in writing specifying such suspension or waiver and is signed by a duly authorized representative of such Agent or such Lender and directed to Borrowers. If either of Agent or any Lender shall accept performance by a Borrower, in whole or in part, of any obligation that a Borrower is required by any of the Credit Documents to perform only when a Default or Event of Default exists, or if either of Agent or any Lender shall exercise any right or remedy under any of the Credit Documents that may not be exercised other than when a Default or Event of Default exists, such Agent's or Lender's acceptance of such performance by a Borrower or such Agent's or Lender's exercise of any such right or remedy shall not operate to waive any such Default or Event of Default or to preclude the exercise by either of Agent or any Lender of any other right or remedy, unless otherwise expressly agreed in writing by such Agent or such Lender, as the case may be. Agent and any Lender may discuss any Borrower's business and financial condition and assets and liabilities with any Committee.

Section 8.04. Application of Funds. After the exercise of remedies provided for in **Section 8.01** (or after the Loans have automatically become immediately due and as set forth in **Section 8.01**), any amounts received on account of the Obligations shall, subject to the provisions of **Section 2.17**, be applied by Agent in the following order:

FIRST, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Agent and amounts payable under Article III) payable to Agent in its capacity as such;

SECOND, to payment of that portion of the Obligations constituting accrued and unpaid interest and unpaid principal of the Swing Line Loans payable to the Swing Line Lender and Agent Advances payable to Agent, ratably among the Swing Line Lender and Agent in proportion to the respective amounts described in this clause Second held by them;

THIRD, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and unpaid principal of the L/C Borrowings, ratably among L/C Issuers in proportion to the respective amounts described in this clause Third held by them;

FOURTH, to payment of that portion of the Obligations constituting fees (other than amounts paid under preceding clauses) payable to Lenders and L/C Issuers arising under the Credit

Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

FIFTH, to Agent for the account of L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrowers pursuant to **Sections 2.05** and **2.16**;

SIXTH, to payment of that portion of the Obligations, other than amounts paid under preceding clauses, constituting (i) accrued and unpaid interest on the Loans and other Obligations (excluding the Incremental Revolving Facility Loans), (ii) unpaid principal of the Loans (excluding the Incremental Revolving Facility Loans), in each case, ratably among Lenders in proportion to the respective amounts described in this clause Sixth held by them;

SEVENTH, to payment of that portion of the Obligations, other than amounts paid under preceding clauses, constituting accrued and unpaid interest on, and unpaid principal of, the Incremental Revolving Facility Loans, in each case, ratably among Lenders in proportion to the respective amounts described in this clause Seventh held by them;

EIGHTH, to payment of that portion of the Obligations constituting unpaid amounts then owing under Cash Management Obligations, ratably among the Cash Management Banks in proportion to the respective amounts described in this clause Eighth held by them;

NINTH, to payment of that portion of the Obligations constituting indemnities and other amounts (other than amounts paid under preceding clauses) due or payable to Lenders and L/C Issuers, ratably among them in proportion to the respective amounts described in this clause Ninth payable to them; and

LAST, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrowers or as otherwise required by any Laws.

Subject to **Sections 2.05(c)** and **2.16**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, (i) Agent and Pre-Petition Agent may agree at any time or times to allocate (or re-allocate) proceeds of Collateral as between the Pre-Petition ABL Obligations and the Obligations and (ii) all Cash Management Obligations shall be excluded from the application described above if Agent has not received written notice thereof, together with such supporting documentation as Agent may request, from the applicable Cash Management Bank. Each Cash Management Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE IX THE AGENCY PROVISIONS

Section 9.01. Appointment and Authority.

(a) Agent. Each of Lenders (in its capacities as any Lender and on behalf of itself and its Affiliates as a potential Cash Management Bank) and L/C Issuers hereby irrevocably appoints Bank of America to act on its behalf as Agent hereunder and under the other Credit Documents and authorizes Agent to take such actions on its behalf and to exercise such powers as are delegated to Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto (including, without limitation, the making of one or more Agent Advances). The provisions of this Article are solely for the benefit of Agent, Lenders and L/C Issuers; Borrowers shall not have rights as third party beneficiaries of any of such provisions (except as expressly provided in **Section 9.06**). It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Laws. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Agent. Agent shall also act as the "Agent" under the Credit Documents, and each of Lenders (in its capacities as any Lender on behalf of itself and its Affiliates and as a potential Cash Management Bank) and L/C Issuers hereby irrevocably appoints and authorizes Agent to act as the agent of such Lender and L/C Issuers for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of Borrowers to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, Agent, as "Collateral Agent" and any co-agent, sub-agent and attorneys-in-fact appointed by Agent pursuant to **Section 9.05** for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents (or for exercising any rights and remedies thereunder at the direction of Agent), shall be entitled to the benefits of all provisions of this **Article IX** and **Article X** (including **Section 10.04(c)**), as though such co-agent, sub-agent and attorneys-in-fact were the "Collateral Agent" under the Credit Documents) as if set forth in full herein with respect thereto.

Section 9.02. Rights as Lender. The Person serving as Agent hereunder shall have the same rights and powers in its capacity as a lender as any other Lender and may exercise the same as though it were not Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as any financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Agent hereunder and without any duty to account therefor to Lenders.

Section 9.03. Exculpatory Provisions. Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that Agent is required to exercise as directed in writing by Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Credit Documents); provided that Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Agent to liability or that is contrary to any Credit Document or applicable Laws, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a

forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Agent or any of its Affiliates in any capacity.

Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 10.01 and 8.01**) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to Agent by a Borrower, any Lender or a L/C Issuer.

Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Agent.

Section 9.04. Reliance by Agent. Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of any Lender or a L/C Issuer, Agent may presume that such condition is satisfactory to such Lender or L/C Issuer unless Agent shall have received notice to the contrary from such Lender or L/C Issuer prior to the making of such Loan or the issuance, extension, renewal or increase of such Letter of Credit. Agent may consult with legal counsel (who may be counsel for a Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05. Delegation of Duties. Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-Agent appointed by Agent. Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent. Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

Section 9.06. Resignation of Agent.

(a) Agent may at any time give notice of its resignation to Lenders, L/C Issuers and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right, in consultation with Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to) on behalf of Lenders and L/C Issuers, appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Agent is a Defaulting Lender pursuant to clause (iv) of the definition thereof, Required Lenders may, to the extent permitted by applicable Laws, by notice in writing to Borrowers and such Person, remove such Person as Agent and, in consultation with Borrowers, appoint a successor. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent (other than as provided in **Section 3.01(g)** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and **Section 10.04** shall continue in effect for the benefit of such retiring or removed Agent, its sub-Agent and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent.

(d) Any resignation by Bank of America as Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it which are outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto, including the right to require Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.05(d)**. If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.04(c)**. Upon the appointment by

Borrowers of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be any Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the retiring L/C Issuer which are outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

Section 9.07. Non-Reliance on Agent and Other Lenders. Each Lender and L/C Issuer acknowledges that it has, independently and without reliance upon Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and L/C Issuer also acknowledges that it will, independently and without reliance upon Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08. No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as a Lender or an L/C Issuer hereunder.

Section 9.09. Collateral Matters. Each of Lenders (in its capacities as a Lender and as a potential Cash Management Bank) and L/C Issuers irrevocably authorizes Agent, at its option and in its discretion, to:

(i) release any Lien on any property granted to or held by Agent under any Credit Document (A) upon termination of the Commitments of all Lenders and Full Payment of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements, including cash collateralization or backstopping, reasonably satisfactory to Agent and L/C Issuers shall have been made), (B) with respect to any property that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Credit Document or (C) if approved, authorized or ratified in writing in accordance with **Section 10.01**;

(ii) release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Credit Documents;

(iii) subordinate any Lien on any property granted to or held by Agent under any Credit Document to the holder of any Lien on such property that is permitted by **Section 7.02(a), (c), or (i)**; and

(iv) ratify and reaffirm the Intercreditor Agreement and any other intercreditor agreement necessary or desirable to permit the incurrence by Borrowers of secured indebtedness permitted to be incurred hereunder with the priority permitted hereunder and perform its obligations and duties, and exercise its rights and remedies, thereunder.

Upon request by Agent at any time, Required Lenders will confirm in writing Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this **Section 9.09**. In each case as specified in this **Section 9.09**, Agent will, at Borrowers' expense, execute and deliver to the applicable Borrower such documents as such Borrower may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Agreement and the other Credit Documents or to subordinate its interest in such item, in each case in accordance with the terms of the Credit Documents and this **Section 9.09**.

Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Agent's Lien thereon, or any certificate prepared by any Borrower in connection therewith, nor shall Agent be responsible or liable to Lenders for any failure to monitor or maintain any portion of the Collateral.

Without limiting the foregoing, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any of the Obligations, it being understood and agreed that all powers, rights and remedies under the Credit Documents may be exercised solely by Agent or Agent on behalf of Secured Parties in accordance with the terms thereof. In the event of a foreclosure by Agent on any of the Collateral pursuant to a public or private sale or other disposition (including any sale or disposition conducted under a plan of reorganization), any Secured Party may be the purchaser of any or all of such Collateral at any such sale or other disposition, and Agent, as agent for and representative of Secured Parties (but not any Lender or Cash Management Bank in its or their respective individual capacities) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by Agent on behalf of Secured Parties at such sale or other disposition. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral provided under the Credit Documents, to have agreed to the foregoing provisions. The provisions of this paragraph are for the sole benefit of Secured Parties and shall not afford any right to, or constitute a defense available to, any Borrower. Agent, in its capacity as "Agent" under the Intercreditor Agreement, shall be entitled to all rights, privileges, protections, immunities, benefits and indemnities provided to Agent under this **Article IX** and under **Section 10.04**.

ARTICLE X MISCELLANEOUS

Section 10.01. Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Credit Document, and no consent to any departure by any Borrower therefrom, shall be effective unless in writing signed by Required Lenders (or by Agent with the consent or ratification of Required Lenders or such other number or percentage of Lenders as may be specified herein) and such Borrower, and acknowledged by Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that (x) Agent and Borrowers may, with the consent of the other, amend, modify or supplement this Agreement and any other Credit Document to cure any ambiguity, omission, typographical error, mistake, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Agent, any Lender or any L/C Issuer, to comply with any local Laws or the advice of local counsel or to cause one or more Credit Documents to be consistent with other Credit Documents and (y) no such amendment, waiver or consent shall:

(i) (A) waive any condition set forth in **Section 5.02** without the written consent of each Lender or (B) without limiting the generality of the preceding clause (A), waive

any condition set forth in **Section 5.01** as to any Credit Event under the Facility (it being understood that the waiver of any Default or Event of Default or the amendment or waiver of any covenant or representation contained herein shall not constitute a waiver of any condition set forth in **Section 5.01** or **Section 5.02**);

(ii) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 8.01**) without the written consent of such Lender;

(iii) postpone any date fixed by this Agreement or any other Credit Document for any payment(excluding mandatory prepayments) of principal, interest or fees due to Lenders (or any of them) hereunder or under any other Credit Document without the written consent of each Lender directly and adversely affected thereby;

(iv) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (ii) of the second proviso to this **Section 10.01**) any fees payable hereunder or under any other Credit Document, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of Borrowers to pay interest or Letter of Credit Fees at the Default Rate;

(v) change **Section 8.04** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(vi) change any provision of this **Section 10.01** or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vii) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(viii) increase the advance rates set forth in the definition of Borrowing Base without the written consent of each Lender;

(ix) subordinate any Lien granted to or arising in favor of Agent under this Agreement or any Security Document, without the written consent of each Lender, except as provided in the DIP Financing Orders and to continue the relative priorities under the Intercreditor Agreement; or

(x) except as otherwise set forth in the definitions of Eligible Accounts and Eligible Inventory, modify the eligibility criteria in respect of the Borrowing Base, or add new asset categories to the Borrowing Base, or otherwise cause the Borrowing Base availability under the Facility to be increased beyond the level permissible under this Agreement as then in effect, in each case without the written consent of each Lender;

and provided, further, that: (i) no amendment, waiver or consent shall, unless in writing and signed by each applicable L/C Issuer in addition to Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by Swing Line Lender in addition to Lenders required above, affect the rights or duties of Swing Line Lender under this

Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by Agent in addition to Lenders required above, affect the rights or duties of Agent under this Agreement or any other Credit Document; and (iv) no amendment, waiver or consent which would require the consent of such Lender but for the fact that it is a Defaulting Lender shall be enforced against it without its consent. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately more adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Section 10.02. Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Borrower, Holdings, Agent, a L/C Issuer or Swing Line Lender to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by any Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to any Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to Lenders and L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Agent; provided that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to **Article II** if such Lender or L/C Issuer, as applicable, has notified Agent that it is incapable of receiving notices under such Article by electronic communication. Agent, Swing Line Lender and L/C Issuers or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall Agent or any of its Related Parties (collectively, "Agent Parties") have any liability to Holdings, any Borrower, any Lender, any L/C Issuer or any other Person for Claims of any kind (whether in tort, contract or otherwise) arising out of any Borrower's or Agent's transmission of Borrower Materials through the Internet.

(d) Change of Address, Etc. Each of Borrowers, Agent, each L/C Issuer and Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to Borrowers, Agent, each L/C Issuer and Swing Line Lender. In addition, each Lender agrees to notify Agent from time to time to ensure that Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Laws, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to any Borrower or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Agent, L/C Issuers and Lenders. Agent, L/C Issuers and Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Borrowing Requests, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of any Borrower or any other Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Each Borrower shall indemnify Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on any notice purportedly given by or on behalf of any Borrower in the absence of gross negligence or willful misconduct by Agent in relying on any notice purportedly given by or on behalf of such Borrower, such Lender or Related Party,

as applicable, as determined in a final and non-appealable judgment by a court of competent jurisdiction. All telephonic notices to and other telephonic communications with Agent may be recorded by Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or L/C Issuer or by Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Credit Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and provided under each other Credit Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by any Laws.

Notwithstanding anything to the contrary contained herein or in any other Credit Document, but subject to the Intercreditor Agreement, the authority to enforce rights and remedies hereunder and under the other Credit Documents against Borrowers or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with **Section 8.01** for the benefit of all Lenders and L/C Issuers; provided, however, that the foregoing shall not prohibit (i) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Credit Documents, (ii) any L/C Issuer and Swing Line Lender from exercising the rights and remedies that inure to its benefit solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be, hereunder and under the other Credit Documents, (iii) any Lender from exercising setoff rights in accordance with **Section 10.09** (subject to the terms of **Section 2.14**) or (iv) any Lender from filing proofs of Claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Credit Documents, then (x) Required Lenders shall have the rights otherwise ascribed to Agent pursuant to **Section 8.01** and (y) in addition to the matters set forth in clauses (ii), (iii) and (iv) of the preceding proviso and subject to **Section 2.14**, any Lender may, with the consent of Required Lenders, enforce any rights and remedies available to it and as authorized by Required Lenders.

Section 10.04. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Each Borrower agrees to pay (i) all reasonable and documented out-of-pocket expenses incurred (i) by Agent (including the reasonable and invoiced fees, charges and disbursements of Parker, Hudson, Rainer & Dobbs LLP, as counsel for Agent, and the reasonable fees, charges and disbursements of one local counsel for Agent in the Chapter 11 Cases), in connection with the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement, the other Credit Documents and DIP Financing Orders (including expenses incurred in connection with due diligence and initial ongoing Collateral examination to the extent incurred in compliance with this Agreement), any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions contemplated hereby or thereby shall be consummated), participation in the Chapter 11 Cases, enforcing the rights of Agent and Lenders under this Agreement, any of the other Credit Documents, the DIP Financing Orders and any other orders of the Court, (ii) by Lenders for reasonable and invoiced fees, charges and disbursements of a single law firm (and one additional law firm under the circumstances described in clause (iv) below) in connection with all matters arising in the Chapter 11 Cases; (iii) by any L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; (iv) by Agent, any Lender or any L/C Issuer (including the reasonable and invoiced fees, charges and disbursements of any special counsel (limited to one firm for Agent, Lenders and L/C Issuers unless, in the reasonable opinion of Agent or any such Lender or L/C Issuer seeking reimbursement, such joint

representation would be inappropriate due to the existence of any actual or potential conflict of interest, in which case Agent or any such Lender or L/C Issuer, as the case may be, shall inform Borrowers of such conflict and Borrowers shall reimburse the legal fees and expenses of no more than such number of additional outside counsel for Agent, Lenders and L/C Issuers as is necessary to avoid any actual or potential conflict of interest) and local counsel (limited to one firm for Agent, Lenders and L/C Issuers in each relevant jurisdiction unless, in the reasonable opinion of Agent or any such Lender or L/C Issuer seeking reimbursement, such joint representation would be inappropriate due to the existence of any actual or potential conflict of interest, in which case Agent or any such Lender or L/C Issuer, as the case may be, shall inform Borrowers of such conflict, and Borrowers shall reimburse the legal fees and expenses of no more than such number of additional outside counsel for Agent, Lenders and L/C Issuers as is necessary to avoid any actual or potential conflict of interest for Agent, Lenders and the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Credit Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; and (v) by Agent for reasonable invoiced charges and disbursements of a single appraisal firm, financial consulting, and environmental engineering firm or consultant.

(b) Indemnification. Each Borrower shall indemnify each Agent (and any sub-agent thereof), each Joint Lead Arranger, each Lender, each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all Claims and related expenses (including the reasonable counsel fees, charges and disbursements of not more than one counsel, plus, if necessary, one local counsel per jurisdiction (except the allocated costs of in-house counsel) unless, in the reasonable opinion of any such Indemnatee seeking indemnity, such joint representation would be inappropriate due to the existence of any actual or potential conflict of interest, in which case such Indemnatee or Indemnitees, as the case may be, shall inform Borrowers of such conflict and Borrowers shall reimburse the legal fees and expenses of no more than such number of additional outside counsel for the Indemnitees as is necessary to avoid any actual or potential conflict of interest), incurred by any Indemnatee or asserted against any Indemnatee by Person (including any Borrower) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions and the other transactions contemplated hereby or thereby (including, in the case of Agent (and any sub-agent thereof) and its Related Parties, the administration of this Agreement and the other Credit Documents (including in respect of any matters addressed in **Section 3.01**)), (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (iii) any Claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such Claims or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnatee, as determined by a court of competent jurisdiction in a final and non-appealable decision (for purposes of this proviso only, each of Agent, each Joint Lead Arranger, any L/C Issuer, Swing Line Lender or any other Lender shall be treated as several and separate Indemnitees, but each of them together with its respective Related Parties, shall be treated as a single Indemnatee) or (y) any material breach of any Credit Document by such Indemnatee. Subject to and without limiting the generality of the foregoing sentence, each Borrower agrees to indemnify each Indemnatee against, and hold each Indemnatee harmless from, any and all Claims and related expenses, including reasonable counsel or consultant fees, charges and disbursements

(limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction) (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (A) any Claim related in any way to Environmental Laws and Holdings, Borrowers or any of their Subsidiaries, or (B) any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such Claims or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee (for purposes of this proviso only, each of Agent, each Joint Lead Arranger, any L/C Issuer, Swing Line Lender or any other Lender shall be treated as several and separate Indemnities, but each of them together with its respective Related Parties shall be treated as a single Indemnitee). None of the Indemnities (or any of their respective Affiliates) shall be responsible or liable to Holdings, any Borrower or any of their respective Subsidiaries, Affiliates or stockholders or any other Person for any special, indirect, consequential or punitive damages, which may be alleged as a result of the Facilities or the Transactions. Without limiting the provisions of **Section 3.01(c)**, this **Section 10.04(b)** shall not apply with respect to Taxes (other than any Taxes that represent Claims, etc. arising from any non-Tax Claim). The provisions of this **Section 10.04** shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Credit Document, or any investigation made by or on behalf of Agent or any Lender or L/C Issuer. All amounts due under this **Section 10.04** shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) Reimbursement by Lenders. To the extent that Borrowers for any reason fail indefeasibly to pay any amount required under subsection (a) or (b) of this Section to be paid by it or them to Agent (or any sub-agent thereof), any L/C Issuer or the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to Agent (or any such sub-agent), each L/C Issuer or the Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's outstanding Loans and unused Commitments at such time) of such unpaid amount (including any such unpaid amount in respect of a Claim asserted by such Lender), such payment to be made severally among them based on such Lenders' percentage (carried out to the ninth decimal place) of the Facility (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, that, the unreimbursed expense or indemnified Claim or related expense, as the case may be, was incurred by or asserted against Agent (or any such sub-agent), a L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for Agent (or any such sub-agent), a L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of Lenders under this subsection (c) are subject to the provisions of **Section 2.02(a)**.

(d) Waiver of Consequential Damages. To the fullest extent permitted by applicable Laws, no Borrower shall assert, and each hereby waives, and acknowledges that no Borrower shall have, any Claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be due and payable (and subject to the DIP Financing Orders) shall be paid not later than 10 days after demand therefor; provided, however, any Indemnatee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnatee was not entitled to indemnification with respect to such payment pursuant to this **Section 10.04**.

(f) Survival. The agreements in this Section and the indemnity provisions of **Section 10.02(e)** shall survive the resignation of Agent, any L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Commitments of all Lenders and the repayment, satisfaction or discharge of all the other Obligations.

Section 10.05. Payments Set Aside. To the extent that any payment by or on behalf of any Borrower is made to Agent, any L/C Issuer or any Lender, or Agent, any L/C Issuer or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (ii) each Lender and L/C Issuer severally agrees to pay to Agent upon demand its applicable share of any amount so recovered from or repaid by Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Lenders and L/C Issuers under clause (ii) of the preceding sentence shall survive the Full Payment of the Obligations and the termination of this Agreement.

Section 10.06. Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of **Section 10.06(b)**, (ii) by way of participation in accordance with the provisions of **Section 10.06(d)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 10.06(e)**. Nothing in this Agreement, expressed or implied, is intended to confer, shall be construed to confer, or shall confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of Agent and Lenders) any legal or equitable right, remedy or Claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this **Section 10.06(b)**, participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time

owing to it (in each case with respect to any Facility), or in the case of an assignment to any Lender or an Affiliate of any Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date, shall not be less than \$5,000,000, unless each Agent otherwise consents (such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities and any facilities provided pursuant to the second paragraph of **Section 10.01** on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any unfunded Commitment if such assignment is to a Person that is not a Lender with a Commitment or an Affiliate of such Lender or (ii) any Loan to a Person that is not a Lender or an Affiliate of any Lender; and

(B) the consent of each L/C Issuer and Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Facility .

(iv) Assignment and Acceptance. The parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance, together with a processing and recordation fee in the amount of \$3,500; provided, however, that Agent may, in its discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire and all applicable tax forms.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Borrower or Affiliate of a Borrower, (B) to any Defaulting Lender or any of its Subsidiaries, or (C) to any natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrowers and Agent, the applicable pro rata share of Loans previously

requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Agent, any L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Laws without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of any Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of **Sections 3.01, 3.04, 3.05 and 10.04** with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any Claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by any Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this **Section 10.06**.

(c) Register. (i) Agent, acting solely for this purpose as an agent of Borrowers (and such agency being solely for Tax purposes), shall maintain at Agent's Office a copy of each Assignment and Acceptance delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of Lenders and L/C Issuers, and the Commitments of, and principal amounts (and stated interest) of the Loans, L/C Borrowings and Swing Line Loans owing to, each Lender and L/C Issuer pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, Agent, Lenders and L/C Issuers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as any Lender, L/C Issuer or Swing Line Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or other substantive change to the Credit Documents is pending, any Lender or L/C Issuer may request and receive from Agent a copy of the Register.

(ii) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), all applicable tax forms, the processing and recordation fee referred to in paragraph (b)(iv) of this **Section 10.06** (unless waived in accordance with such paragraph) and any written consent to such assignment required by paragraph (b)(iii) of this **Section 10.06**, Agent shall promptly accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (c)(ii).

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Borrowers or Agent, sell participations to any Person (other than a natural Person, a known Defaulting Lender or any Borrower or any Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrowers, Agent, L/C Issuers and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 10.04(c)** without regard to the existence of any participation.

Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Credit Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any of the other Credit Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clause (y) of the first proviso to **Section 10.01** that affects such Participant and requires the consent of each Lender directly affected thereby. The Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.01, 3.04 and 3.05** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under **Section 3.01(e)** shall be delivered to such Lender who sells the participation); provided that such Participant (A) agrees to be subject to the provisions of **Sections 3.06 and 10.14** as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under **Sections 3.01, 3.04 or 3.05**, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, unless the sale of the participation to such Participant is made with Borrowers' prior written consent. A Participant shall not be entitled to the benefits of **Section 3.01** to the extent such Participant fails to comply with **Section 3.01(e)** as though it were a Lender. Each Lender that sells a participation agrees, at Borrowers' request and expense, to use reasonable efforts to cooperate with Borrowers to effectuate the provisions of **Section 3.06** with respect to any Participant. To the extent permitted by applicable Laws, each Participant also shall be entitled to the benefits of **Section 10.09** as though it were a Lender; provided that such Participant agrees to be subject to **Section 2.14** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, L/C Borrowings, Swing Line Loans or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, L/C Borrowing, Swing Line Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve

Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as an L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Facility Commitment and Revolving Facility Loans pursuant to **Section 10.06(b)**, Bank of America may, (i) upon 15 days' notice to Borrowers and Lenders, resign as a L/C Issuer and/or (ii) upon 15 days' notice to Borrowers, resign as Swing Line Lender. In the event of any such resignation as a L/C Issuer or Swing Line Lender, Borrowers shall be entitled to appoint from among Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by Borrowers to appoint any such successor shall affect the resignation of Bank of America as an L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of a L/C Issuer hereunder with respect to all Letters of Credit issued by it which remain outstanding as of the effective date of its resignation as a L/C Issuer and all L/C Obligations with respect thereto (including the right to require Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.05(d)**). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.04(c)**. Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (ii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the retiring L/C Issuer and remaining outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

Section 10.07. Treatment of Certain Information; Confidentiality. Each of Agent, L/C Issuers and Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (i) to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (ii) to the extent required or requested by any applicable regulatory authority having jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (iv) to any other party hereto; (v) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing confidentiality provisions substantially the same (and at least as restrictive) as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to **Section 2.15** or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the obligations under this Agreement, (vii) to (A) any rating agency in connection with rating any Borrower or its Subsidiaries or the credit facilities provided hereunder or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, in each case on a confidential basis, (viii) with the consent of Borrowers or (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to Agent, any L/C Issuer or any Lender or any of their respective Affiliates on a non-confidential basis from a source other than Holdings, any Borrower or any Subsidiary. For purposes of this Section, "Information" means all information received from Holdings, Borrowers or any Subsidiary relating to Holdings, any Borrower or any Subsidiary or any of their respective businesses, other than any

such information that is available to Agent, any L/C Issuer or any Lender on a non-confidential basis prior to disclosure by Holdings, any Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding any other provision of this Agreement, any other Credit Document or any Assignment and Acceptance, the provisions of this **Section 10.07** shall survive with respect to Agent and each Lender and L/C Issuer until the second anniversary of Agent or such Lender ceasing to be Agent or a Lender or an L/C Issuer, respectively.

Each of Agent, L/C Issuers and Lenders acknowledges that (i) the Information may include material non-public information concerning Holdings, Borrowers or one or more Subsidiaries, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Laws, including Federal and state securities Laws.

Section 10.08. Platform; Borrower Materials. Each of Holdings and Borrowers hereby acknowledges that (i) Agent may, but shall not be obligated to, make available to Lenders and L/C Issuers materials and/or information provided by or on behalf of Holdings and any Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (ii) certain of Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to any Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each of Holdings and Borrowers hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that: (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," each of Borrowers shall be deemed to have authorized Agent, Joint Lead Arrangers, L/C Issuers and Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to any Borrower or its securities for purposes of United States Federal and state securities Laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 10.07**); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) Agent and Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

Section 10.09. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Laws, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower against any and all of the obligations of such Borrower now or hereafter existing under this Agreement or any other Credit Document to such Lender or an L/C Issuer or such Affiliate, irrespective of whether or not such Lender, L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Credit Document and although such obligations of such Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or L/C Issuer or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Agent for further

application in accordance with the provisions of **Section 2.17** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Agent, L/C Issuers and Lenders, and (y) the Defaulting Lender shall provide promptly to Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, L/C Issuer or their respective Affiliates may have. Each Lender and L/C Issuer agrees to notify Borrowers and Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.10. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Laws (the "Maximum Rate"). If Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged, or received by Agent or any Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Laws, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.11. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Credit Documents, and any separate letter agreements with respect to fees payable to Agent or an L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **Section 5.02**, this Agreement shall become effective when it shall have been executed by Agent and when Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.12. Survival and Reaffirmation of Representations and Warranties. All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution, delivery and acceptance hereof and thereof and the closing of the Transactions. Such representations and warranties have been or will be relied upon by Agent and each Lender and L/C Issuer, regardless of any investigation made by Agent or any Lender or L/C Issuer or on their behalf and notwithstanding that Agent or any Lender or L/C Issuer may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other DIP Finance Obligation shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Each representation and warranty contained in this Agreement and in any other Credit Document shall be deemed to be reaffirmed by each Borrower on each day that any Borrower requests or is deemed to have requested an extension of credit hereunder, unless Borrowers have notified Agent prior to any such extension of credit that Borrowers are no longer able to make any such representation or warranty and except for changes in the nature of a Borrower's business or operations, or, if applicable, any of its Subsidiaries' businesses or operations, that may occur after the date hereof in the Ordinary Course of Business of such Borrower or Subsidiary so long as Agent has consented to such changes or such changes are not violative of any provision of this Agreement or any other Credit Document.

Notwithstanding the foregoing, representations and warranties which by their terms are applicable only to a specific date shall be deemed made only at and as of such date.

Section 10.13. Severability. If any provision of this Agreement or the other Credit Documents is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Credit Documents shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 10.13**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by Agent, L/C Issuer or Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.14. Replacement of Lenders. If any Borrower is entitled to replace any Lender pursuant to the provisions of **Section 3.06**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives any Borrower the right to replace any Lender as a party hereto, then such Borrower may, at its sole expense and effort, upon notice to such Lender and Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in **Section 10.06**), all of its interests, rights and obligations under this Agreement and the related Credit Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if any Lender accepts such assignment), provided that:

- (i) unless waived in writing, such Borrower or such assignee shall have paid to Agent the assignment fee specified in **Section 10.06(b)**;
- (ii) such Lender shall have received payment of an amount equal to the outstanding par principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any amounts under **Section 3.05**) from such assignee (to the extent of such outstanding principal and accrued interest and fees) or such Borrower (in the case of all other amounts);
- (iii) in the case of any assignment resulting from a Claim for compensation under **Section 3.04** or payments required to be made pursuant to **Section 3.01**, such assignment will result in a reduction in such compensation or payments thereafter; and
- (iv) such assignment does not conflict with applicable Laws.

Any Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver or consent, as applicable, by such Lender or otherwise, the circumstances entitling such Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this **Section 10.14** may be effected pursuant to, and recorded on the Register after execution of, an Assignment and Acceptance executed by such Borrower, Agent and the assignee and such Lender required to make such assignment need not be a party thereto. Each Lender agrees that, if such Borrower elects to replace such Lender in accordance with this Section, it shall promptly deliver to Agent any Note (if Notes have been issued in respect of such Lender's Loans) subject to such Assignment and Acceptance. Nothing in this **Section 10.14** shall be deemed to prejudice any rights that any Borrower may have against any Lender that is Defaulting Lender.

Section 10.15. Governing Law; Jurisdiction Etc.

(a) Governing Law. THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT (EXCEPT, AS TO ANY OTHER CREDIT DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF THAT WOULD REQUIRE THE APPLICATION OF LAWS OF ANOTHER JURISDICTION AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE AND BANKRUPTCY RULES.

(b) Submission to Jurisdiction. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST AGENT, ANY LENDER, ANY L/C ISSUER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN IN THE COURT OR, TO THE EXTENT THE COURT DOES NOT HAVE JURISDICTION OR DECLINES TO EXERCISE JURISDICTION, IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAWS. NOTHING IN THIS AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT OR ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AGAINST ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) Waiver of Venue. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 10.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAWS.

Section 10.16. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.17. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), each Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by Agent, Joint Lead Arrangers and Lenders are arm's-length commercial transactions between such Borrower and its Affiliates, on the one hand, and Agent, Joint Lead Arrangers and Lenders, on the other hand, (B) such Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) such Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents ; (ii) (A) Agent, each Joint Lead Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for such Borrower or any of its Affiliates, or any other Person and (B) neither Agent, any Joint Lead Arranger nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (iii) Agent, Joint Lead Arrangers and Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither Agent, any Joint Lead Arranger nor any Lender has any obligation to disclose any of such interests to such Borrower or its Affiliates. To the fullest extent permitted by applicable Laws, each Borrower hereby waives and releases any Claims that it may have against Agent, any Joint Lead Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.18. Electronic Execution of Assignments and Certain Other Documents. The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Acceptance or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

Section 10.19. USA Patriot Act Notice. Each Lender that is subject to the Patriot Act (as hereinafter defined) and Agent (for itself and not on behalf of any Lender) hereby notifies Borrowers that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into Law

October 26, 2001) (the "Patriot Act"), it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender or Agent, as applicable, to identify each Borrower in accordance with the Patriot Act. Each Borrower shall, promptly following a request by Agent or any Lender, provide all documentation and other information that Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Patriot Act.

Section 10.20. Intercreditor Agreement. Each Lender Party understands, acknowledges and agrees that it is the intention of the parties hereto that each of the Obligations and the Term DIP Obligations are intended to constitute a distinct and separate class from the other, and, as between Secured Parties, on the one hand, and the Term DIP Parties, on the other hand, it is the intention of the parties that (i) the Obligations (including all interest with respect thereto) have a first priority security interest in all ABL Priority Collateral and that the Term DIP Obligations (including all interest with respect thereto) have a second priority security interest in all ABL Priority Collateral, and (ii) the Term DIP Obligations (including all post-petition interest with respect thereto) have a first priority security interest in all Term Priority Collateral and that the Obligations (including all interest with respect thereto) have a second priority security interest in all Term Priority Collateral. Each Lender further understands, acknowledges and agrees that the provisions setting forth the priorities as between the Term DIP Parties, on the one hand, and Secured Parties, on the other hand, are set forth in the Intercreditor Agreement.

Each Lender agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement. Each Lender authorizes and instructs Agent to enter into the Security Documents and ratify and reaffirm the Intercreditor Agreement on behalf of such Lender and to take all actions (and execute all documents) required (or deemed advisable) by Agent in accordance with the terms of the Security Documents and the Intercreditor Agreement.

The provisions of this **Section 10.20** are not intended to summarize all relevant provisions of the Intercreditor Agreement. Reference must be made to the Intercreditor Agreement itself to understand all terms and conditions thereof. Each Lender is responsible for making its own analysis and review of the Intercreditor Agreement and the terms and provision thereof, and neither Agent nor any of their respective affiliates, representatives, advisors, attorneys or other Person makes any representation to any Lender as to the sufficiency or advisability of the provisions contained in the Intercreditor Agreement. Notwithstanding anything to the contrary set forth herein or in any other Credit Document, this Agreement is subject to the terms and provisions of the Intercreditor Agreement. In the event of an inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.

Section 10.21. Appointment of Company as Representative. Each Borrower irrevocably appoints and constitutes the Company as its agent to deliver notices, instruments, documents and other materials as required hereunder, in each case to Agent or any Lender in accordance with the terms hereof, and under the other Credit Documents (including the Intercreditor Agreement). Any such notice, instrument, document or other material, and each related election, representation, warranty, agreement or undertaking in connection therewith made by or on behalf of each such Borrower by the Company shall be deemed for all purposes to have been made by each such Borrower, as the case may be, and shall be binding and enforceable against such Borrower to the same extent as made directly by such Borrower.

Section 10.22. Field Audit and Examination Reports; Disclaimer by Lenders. By signing this Agreement, each Lender: (i) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each a "Report" and collectively, "Reports") prepared by or on behalf of Agent; (ii) expressly agrees and acknowledges that

neither Bank of America nor Agent (A) makes any representation or warranty as to the accuracy of any Report, or (B) shall be liable for any information contained in any Report; (iii) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent, Bank of America, or other party performing any audit or examination will inspect only specific information regarding Borrowers and will rely significantly upon Borrowers' books and records, as well as on representations of Borrowers' personnel; (iv) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its participants, or use any Report in any other manner; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (A) to hold Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to any Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of any Borrower; and (B) to pay and protect, and indemnify, defend, and hold Agent and any such other Lender preparing a Report harmless from and against, the Claims, actions, proceedings, damages, costs, expenses, and other amounts incurred by or on behalf of Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.23. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.24. Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the writedown and conversion powers of any EEA Resolution Authority

[Signature Pages Follow]

Schedule 2.01

Commitments

Lenders	Share of Revolving Facility (exclusive of Incremental Revolving Facility)	Revolving Facility Commitment	Share of Incremental Revolving Facility	Incremental Revolving Facility Commitment
Bank of America, N.A.	18.00%	\$ 22,075,474	100%	\$ 7,358,491
Citibank, N.A.	14.00%	\$ 17,169,811	0%	\$ 0
Siemens Financial Services, Inc.	14.00%	\$ 17,169,811	0%	\$ 0
UBS AG, Stamford Branch	14.00%	\$ 17,169,811	0%	\$ 0
U.S. Bank National Association	14.00%	\$ 17,169,811	0%	\$ 0
Wells Fargo Bank National Association	14.00%	\$ 17,169,811	0%	\$ 0
Bentham Wholesale Syndicated Loan Fund	3.20%	\$ 3,924,528	0%	\$ 0
Barclays Bank PLC	2.00%	\$ 2,452,830	0%	\$ 0
Credit Suisse AG, Cayman Islands Branch	2.00%	\$ 2,452,830	0%	\$ 0
Atrium XI	1.20%	\$ 1,471,698	0%	\$ 0
Madison Park Funding VIII	1.20%	\$ 1,471,698	0%	\$ 0
Madison Park Funding XV	1.20%	\$ 1,471,698	0%	\$ 0
Madison Park Funding IV	0.80%	\$ 981,132	0%	\$ 0
JPMorgan Chase Bank, N.A.	0.40%	\$ 490,566	0%	\$ 0
TOTALS		\$122,641,509		\$ 7,358,491 (5.66%)

Exhibit C

Term DIP Loan Agreement

FORM OF DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT

dated as of February [●], 2016

among

NORANDA ALUMINUM HOLDING CORPORATION,

**NORANDA ALUMINUM ACQUISITION CORPORATION,
as the Borrower Representative,**

**NORANDA BAUXITE LIMITED,
as the Jamaican Borrower,**

**NORANDA INTERMEDIATE HOLDING CORPORATION, NORANDA ALUMINUM, INC.,
GRAMERCY ALUMINA HOLDINGS INC., NORANDAL USA, INC., GRAMERCY ALUMINA
HOLDINGS II, INC., NORANDA ALUMINA LLC, AND NHB CAPITAL, LLC
as Guarantors,**

THE LENDERS FROM TIME TO TIME PARTY HERETO,

and

**CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent**

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DEBTOR-IN-POSSESSION TERM LOAN CREDIT AGREEMENT dated as of February [●], 2016 (this “Agreement”), among NORANDA ALUMINUM HOLDING CORPORATION, a Delaware corporation and a Debtor and Debtor-in-Possession under Chapter 11 of the U.S. Bankruptcy Code (“Holdings”), NORANDA ALUMINUM ACQUISITION CORPORATION, a Delaware corporation and a Debtor and Debtor-in-Possession under Chapter 11 of the U.S. Bankruptcy Code (the “U.S. Borrower”, and in its capacity as borrower representative, the “Borrower Representative”), Noranda Bauxite Limited, a Jamaica limited company (the “Jamaican Borrower”, and together with the U.S. Borrower, each a “Borrower”, and together the “Borrowers”), NORANDA INTERMEDIATE HOLDING CORPORATION, a Delaware corporation (“Intermediate Holdings”), NORANDA ALUMINUM, INC., a Delaware corporation (“Noranda Aluminum”), GRAMERCY ALUMINA HOLDINGS INC., a Delaware corporation (“Gramercy I”), GRAMERCY ALUMINA HOLDINGS II, INC., a Delaware corporation (“Gramercy II”), Noranda Alumina LLC, a Delaware limited liability company (“Noranda Alumina”), NHB Capital, LLC, a Delaware limited liability company (“NHB”, and together with Intermediate Holdings, Noranda Aluminum, Gramercy I, Gramercy II and Noranda Alumina, each a “Guarantor” and together the “Guarantors”), the LENDERS party hereto from time to time, CORTLAND CAPITAL MARKET SERVICES LLC, as administrative agent and collateral agent (in such capacities, the “Administrative Agent”) for the Lenders.

WHEREAS, on February 8, 2016 (the “Petition Date”), the Loan Parties (in such capacity, each a “Debtor” and collectively the “Debtors”) filed voluntary petitions with the Bankruptcy Court initiating cases pending under chapter 11 of the U.S. Bankruptcy Code (collectively, the “Cases” and each a “Case”) and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the U.S. Bankruptcy Code; and

WHEREAS, the Borrowers have requested that the Lenders provide a term loan facility in an aggregate principal amount of \$35,000,000;

NOW, THEREFORE, the Lenders are willing to extend such credit to the Borrowers on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Acceptable Business Plan” means a five-year business plan, in form and substance acceptable to the Required Lenders in their sole discretion in all respects, for the reorganization or other disposition of each part of the Upstream Business and including, among other things, (1) evidence of acceptable new contracts for the Debtors’ chemical grade alumina product; (2) an acceptable marketing plan and timeline for the sale of all of the Debtors’ assets being part of Orange Valley, in the parish of Saint Ann, Jamaica; (3) an acceptable marketing plan and timeline for the sale of all of the Debtors’ real estate assets in New Madrid, Missouri; (4) an acceptable resolution to the renegotiation or rejection of the Sherwin Contract”; and (5) an acceptable plan for the reduction of capital and other expenditures in the Debtors’ facilities in the parish of Saint Ann, Jamaica.

“Additional Collateral Account” has the meaning assigned to such term in Section 6.13.

“Additional Mortgage” has the meaning assigned to such term in Section 6.10(c).

“Adequate Protection Payments” has the meaning assigned to such term in Section 6.16.

“Adjusted Eurodollar Rate” means the quotient obtained (expressed as a decimal, carried out to five decimal places) by dividing (A) the applicable Eurodollar Base Rate by (B) 1.00 minus the Eurodollar Reserve Percentage.

“Administrative Agent” has the meaning assigned to such term in the preamble to this Agreement.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower Representative and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified.

“Agent Fee Letter” means that certain Agency Fee Letter, dated as of February 8, 2016, between the Administrative Agent and the Borrowers.

“Agent Parties” has the meaning assigned to such term in Section 10.02(c).

“Agreement” means, on any date, this Agreement as originally in effect on the Effective Date and as thereafter amended, supplemented, amended and restated or otherwise modified from time to time and in effect on such date.

“Applicable Margin” means, in respect of the DIP Term Loan Facility, 10.00% per annum for Base Rate Loans and 11.00% per annum for Eurodollar Rate Loans.

“Approved Fund” means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

“Asset Sale” means any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any sale and leaseback of assets and any mortgage or lease of Real Property) to any person of any asset or assets of the U.S. Borrower or any Subsidiary.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower Representative (if required by such assignment and acceptance), in the form of Exhibit A or such other form as shall be approved by the Administrative Agent and the Borrower Representative (such approval not to be unreasonably withheld or delayed).

“August New Madrid Event” has the meaning assigned to such term in Section 6.13.

“Avoidance Action” means any claim and cause of action that constitutes an avoidance action under Sections 544, 545, 547, 548, 549, 550 or 553 of the U.S. Bankruptcy Code or any other avoidance action under the U.S. Bankruptcy Code, state law or other Debtor Relief Laws and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Missouri or any appellate court having jurisdiction over the Cases from time to time.

“Base Rate” means, for any day, a rate per annum equal to the highest of (i) the Prime Rate for such day, (ii) the sum of 0.50% plus the Federal Funds Rate for such day and (iii) the Eurodollar Base Rate (determined by reference to clause (ii) of the definition thereof) plus 1.00%.

“Base Rate Borrowing” means a Borrowing comprised of Base Rate Loans.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Board of Directors” means, as to any person, the board of directors or other governing body of such person, or if such person is owned or managed by a single entity, the board of directors or other governing body of such entity.

“Borrower” or “Borrowers” has the meaning assigned thereto in the preamble to this Agreement.

“Borrower Materials” has the meaning assigned to such term in Section 10.08.

“Borrowing” means a group of Loans of a single Type and made on a single date and, in the case of Eurodollar Rate Loans, as to which a single Interest Period is in effect.

“Borrowing Minimum” means \$1,000,000.

“Borrowing Multiple” means \$1,000,000.

“Borrower Representative” has the meaning assigned to such term in Section 2.17.

“Borrowing Request” means a request by a Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C.

“Budget” means the weekly statement of receipts and disbursements of Holdings and its Subsidiaries on a consolidated basis for the 13 weeks commencing with the first full one-week period ending February 12, 2016, including (i) segment breakdowns for “Bauxite,” “Alumina,” “Primary,” “Corporate” and “Flat Rolled”, (ii) breakdowns of Customer Sales for Alumina and Flat Rolled (“Net Sales”) (iii) breakdowns of A/R Receipts (“Operating Receipts”), (iv) breakdowns of One-Time Sales Collections, Other Receipts and Intercompany Elimination Receipts (“Non-Operating Receipts”), (v) breakdowns of cash disbursements for “Metal/Scrap/Forwards”, “Production Materials/Services”, “Production Energy”, “Freight”, “Maintenance (Non-Capex)”, “Contract Mining/Fuel”, “Levy/Royalties/Asset Usage” (“Operating Disbursements”), (vi) breakdowns of payroll disbursements for “Salaries/Wages/Benefits/Payroll Taxes”, “Pension” and “OPEB” (“Payroll Disbursements”), (vii) breakdowns of capex disbursements (“CAPEX Disbursements”), (viii) breakdowns of other disbursements for “Insurance”, “Taxes (ex-Payroll)”, “Other-Disbursements”, Professional Fees (non-restructuring) and “Interco Elimination-Disb.” (“Other Disbursements”), (ix) breakdowns of adjusted operating cash flow (excluding any “Restructuring Prof. Fees”) (“Operating Cash Flow”), (x) breakdowns of other cash flow items to get to Net Cash Flow, including “Term Loan B Interest”, “ABL Interest”, “Other Debt Service”, “Restructuring Professional Payments” and “U.S. Trustee Fees”, “Utility

Deposits”, “Critical/Foreign/Shipper Payments”, “DIP Interest”, “DIP Fees”, “Severance”, and “KEIP/KERP Payments” (“Non-Operating Payments”), (xi) breakdowns of net cash flow (“Net Cash Flow”), (xii) beginning and ending cash balances for the period, (xiii) the consolidated total net “Borrowing Base” for the weekly period with A/R and Inventory balances by segment, (xiv) the beginning and ending “ABL balance” and (xv) the beginning and ending “DIP Term Loan balance”; provided that, the U.S. Borrower shall deliver to the Administrative Agent an updated Budget as required in Section 6.04(k), which shall be reasonably in the same form as the Budget and shall be satisfactory to the Required Lenders, and such updated budget shall become the “Budget” for all purposes under the Loan Documents.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located, except that if such day relates to any Eurodollar Rate Loan, such day shall also be a London Banking Day.

“Capital Lease Obligations” of any person means the obligations of such person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Carve-Out” has meaning assigned to such term in the applicable Order.

“Case” and “Cases” have the meanings assigned thereto in the preamble to this Agreement.

“Cash Management Agreement” means any agreement to provide an overdraft line or other cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Change in Control” shall be deemed to occur if:

(i) at any time (A) Holdings shall fail to own, directly or indirectly, beneficially and of record, 100% of the issued and outstanding Equity Interests of the U.S. Borrower, (B) the U.S. Borrower shall fail to own, directly or indirectly, beneficially and of record, 100% of the issued and outstanding Equity Interests of the Jamaican Borrower, (C) a majority of the seats (other than vacant seats) on the Board of Directors of Holdings shall at any time be occupied by persons who were neither (i) nominated by the Board of Directors of Holdings or a Permitted Holder, (ii) appointed by directors so nominated nor (iii) appointed by a Permitted Holder, or (D) a “change of control” (or similar event) shall occur under the DIP ABL Loan Agreement, any Material Indebtedness or any Disqualified Stock (to the extent the aggregate amount of the applicable Disqualified Stock exceeds \$35,000,000); or

(ii) any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), other than any combination of the Permitted Holders or any “group” including any Permitted Holders, shall have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting interest in Holdings’ Equity Interests and the Permitted Holders shall own, directly or indirectly, less than such person or “group” on a fully diluted basis of the voting interest in Holdings’ Equity Interests.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Closing Date” means the first date on or after the Effective Date when all the conditions precedent in Section 5.02 are satisfied or waived in accordance with Section 10.01.

“Closing Fee” has the meaning assigned to such term in Section 2.09(b).

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

“Collateral” means all the “Collateral” as defined in any Security Document and shall also include the Mortgaged Properties and all other property that is subject to any Lien in favor of the Collateral Agent or any Subagent for the benefit of the Lenders pursuant to any Security Document.

“Collateral Agent” means the party acting as collateral agent for the Secured Parties under the Security Documents. On the Closing Date, the Collateral Agent is the same person as the Administrative Agent. Unless the context otherwise requires, the term “Administrative Agent” as used herein shall include the Collateral Agent, notwithstanding various specific references to the Collateral Agent herein.

“Collateral Agreement” means the Guarantee and Collateral Agreement, as amended, supplemented or otherwise modified from time to time, in the form of Exhibit E, among Holdings, the U.S. Borrower, each Subsidiary Loan Party and the Administrative Agent.

“Collateral and Guarantee Requirement” means the requirement that, subject to the Intercreditor Agreement:

(i) on the Closing Date, the Collateral Agent shall have received (A) from Holdings, the U.S. Borrower and each Subsidiary Loan Party, a counterpart of the Collateral Agreement duly executed and delivered on behalf of such person and (B) an Acknowledgment and Consent in the form attached to the Collateral Agreement, executed and delivered by each issuer of Pledged Collateral (as defined in the Collateral Agreement), if any, that is a Subsidiary of the U.S. Borrower but is not a Loan Party;

(ii) on the Closing Date, (A) the Collateral Agent shall have received (i) a pledge of all the issued and outstanding Equity Interests of (x) the U.S. Borrower and (y) each Wholly Owned Domestic Subsidiary owned on the Closing Date directly or indirectly by or on behalf of the U.S. Borrower or any Subsidiary Loan Party and (ii) a pledge of 100% of the outstanding nonvoting Equity Interests and of 100% of the outstanding voting Equity Interests of each Wholly Owned Foreign Subsidiary directly or indirectly owned by any Loan Party and (B) to the extent not previously delivered to the Prepetition ABL Agent or the Prepetition Term Agent, as applicable, the Collateral Agent shall have received all certificates or other instruments

(if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;

(iii) (A) all Indebtedness of the U.S. Borrower and each Subsidiary that is owing to any Loan Party shall have been pledged pursuant to the Collateral Agreement (or other applicable Security Document as reasonably required by the Collateral Agent), and (B) the Collateral Agent shall, if any such Indebtedness is evidenced by a promissory note or an instrument, have received all such promissory notes or instruments, together with note powers or other instruments of transfer with respect thereto endorsed in blank;

(iv) in the case of any person that becomes a Subsidiary Loan Party after the Closing Date, the Collateral Agent shall have received a supplement to the Collateral Agreement, in the form specified therein, duly executed and delivered on behalf of such Subsidiary Loan Party;

(v) after the Closing Date, (A) all the outstanding Equity Interests of (i) any person that becomes a Subsidiary Loan Party after the Closing Date (and which are owned by a Loan Party) and (ii) subject to Section 6.10(g), any other Person that are acquired by a Loan Party after the Closing Date shall have been pledged pursuant to the Collateral Agreement and (B) the Collateral Agent shall have received all certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank;

(vi) except as otherwise contemplated by any Security Document and subject to Section 5.02(d), all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by the Security Documents (in each case, including any supplements thereto) and perfect such Liens to the extent required by, and with the priority required by, the Security Documents, shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or the recording concurrently with, or promptly following, the execution and delivery of each such Security Document;

(vii) within 90 days (or such longer period as the Collateral Agent shall determine in its discretion) of the Closing Date, if so required by the Collateral Agent, the Collateral Agent shall have received (A) counterparts of each Mortgage to be entered into with respect to each Mortgaged Property set forth on Schedule 1.01 duly executed and delivered by the record owner of such Mortgaged Property and suitable for recording or filing and, if such Mortgaged Property is an improved Real Property, (i)(x) no later than 15 days prior to the execution and delivery of such Mortgage (or such later date as the Collateral Agent shall determine in its sole discretion), address and other identifying information with respect to such Mortgaged Property reasonably satisfactory to the Collateral Agent and (y) if any improvements on such Mortgaged Property are located within any area designated by the Director of the Federal Emergency Management Agency as a "special flood hazard" area (as may be established by a completed Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such Mortgaged Property), no later than 5 days prior to the execution and delivery of such Mortgage (or such later date as the Collateral Agent shall determine in its sole discretion), evidence of a flood insurance policy (if such insurance is required by Law and commercially reasonably available) from a company and in an amount satisfactory to the Collateral Agent for the applicable portion of the premises, naming the Collateral Agent, for the benefit of the Lenders, as mortgagee, or (ii) a certification from a registered engineer or land surveyor in a form reasonably satisfactory to the Collateral Agent or other evidence reasonably satisfactory to the

Collateral Agent that none of the improvements on such Mortgaged Property is located within any area designated by the Director of the Federal Emergency Management Agency as a "special flood hazard" area and (B) such other documents including, but not limited to, any consents, agreements and confirmations of third parties (but without duplication of the documents described in clause (viii) below), as the Collateral Agent may reasonably request with respect to any such Mortgage or Mortgaged Property;

(viii) within 90 days (or such longer period as the Collateral Agent shall determine in its discretion) of the Closing Date, if so required by the Collateral Agent, the Collateral Agent shall have received (A) a policy or policies or marked-up unconditional binder of title insurance, as applicable, paid for by the U.S. Borrower, issued by a nationally recognized title insurance company, insuring the Lien of each Mortgage in respect of the Mortgaged Property set forth on Schedule 1.01 as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Liens, together with such customary endorsements (including zoning endorsements where reasonably appropriate and available), coinsurance and reinsurance as the Collateral Agent may reasonably request, including with respect to any such property located in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality in a form reasonably acceptable to the Collateral Agent; provided, however, that, with respect to the Real Property located in Gramercy, Louisiana, any such policy or binder may contain a survey exception, and (B) except with respect to the Real Property located in Gramercy, Louisiana, a survey of each Mortgaged Property set forth on Schedule 1.01 (including all improvements, easements and other customary matters thereon reasonably required by the Collateral Agent (taking account of whether such survey is an aerial or on-ground survey)), for which all necessary fees (where applicable) have been paid, which is either (i)(w) dated (or redated) not earlier than six months prior to the date of delivery thereof unless there shall have occurred within six months prior to such date of delivery any exterior construction on the site of such Mortgaged Property, in which event such survey shall be dated (or redated) after the completion of such construction or if such construction shall not have been completed as of such date of delivery, not earlier than 20 days prior to such date of delivery; provided that delivery of a survey dated earlier than six months prior to the date of delivery thereof shall be sufficient if accompanied by an executed "no change" affidavit with respect thereto, certifying that no material changes have occurred with respect to the matters shown on such survey since the date thereof, or, if there have been any material changes, that all such material changes are wholly contained within the boundaries of the applicable Mortgaged Property and do not encroach upon any other property or any applicable building setbacks, easements or rights of way, (x) certified by the surveyor (in a manner reasonably acceptable to the Collateral Agent) to the Collateral Agent and the title insurance company insuring the Mortgage, (y) complying in all respects with the minimum detail requirements (including, with respect to the Mortgaged Property located in New Madrid, Missouri, based on aerial photography without planimetrics and not on-ground measurement) of the American Land Title Association and American Congress of Surveying and Mapping as such requirements are in effect on the date of preparation of such survey and (z) sufficient for such title insurance company to remove all standard survey exceptions from the title insurance policy relating to such Mortgaged Property or (ii) otherwise reasonably acceptable to the Collateral Agent;

(ix) upon or prior to the delivery of the Mortgages, the Collateral Agent shall have received evidence of the insurance required by the terms of the Mortgages;

(x) except as otherwise contemplated by any Security Document, each Loan Party shall have obtained all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which

it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder; and

(xi) after the Closing Date, the Collateral Agent shall have received (A) such other Security Documents as may be required to be delivered pursuant to Section 6.10, and (B) upon reasonable request by the Collateral Agent, evidence of compliance with any other requirements of Section 6.10.

“Committee” means an official committee of unsecured creditors appointed in any of the Chapter 11 Cases by the U.S. Trustee.

“Commitments” means with respect to any Lender, such Lender’s Initial Term Loan Commitment and Delayed Draw Term Loan Commitment.

“Confirmation Order” has the meaning assigned to such term in Section 6.12(b)(ii).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Event” has the meaning assigned to such term in Article V.

“Customer Sales” means sales of the Debtors’ products to their customers, which sales shall exclude intercompany sales between the Debtors and their Subsidiaries

“Debtor” and “Debtors” has meaning assigned thereto in the preamble to this Agreement.

“Debtor Relief Laws” means the U.S. Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

“Defaulting Lender” means any Lender that (i) has failed (A) to fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender has notified the Administrative Agent and the Borrower Representative in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (B) to pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (ii) has notified the Borrower Representative or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (iii) has failed, within three Business Days after

written request by the Administrative Agent or the Borrower Representative, to confirm in writing to the Administrative Agent and the Borrower Representative that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (iii) upon receipt of such written confirmation by the Administrative Agent and the Borrower Representative), or (iv) has, or has a direct or indirect parent company that has (A) become insolvent, or become generally unable to pay its debts as they become due, or admitted in writing its inability to pay its debts as they become due, or made a general assignment for the benefit of its creditors, (B) become the subject of a proceeding under any Debtor Relief Law, or (C) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (i) through (iv) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower Representative and, to the extent permitted by law, each other Lender promptly following such determination.

“Default Rate” has the meaning assigned to such term in Section 2.10(c).

“Delayed Draw Term Loan Commitment” means the commitment of a Lender to make or otherwise fund any Delayed Draw Term Loan, and “Delayed Draw Term Loan Commitments” means such commitments of all Lenders in the aggregate. The amount of each Lender’s Delayed Draw Term Loan Commitment is set forth on Schedule 2.01, or, if such Lender’s Delayed Draw Term Loan Commitment has been assigned, in the applicable Assignment and Acceptance, subject to any adjustment pursuant to the terms and conditions hereof. The aggregate amount of the Delayed Draw Term Loan Commitments as of the Closing Date is \$10,000,000.

“Delayed Draw Term Loan” has the meaning assigned to such term in Section 2.01(b).

“Deposit Account” means a “deposit account” (as defined in the Uniform Commercial Code) and also means and includes all demand, time, savings, passbook or similar accounts maintained by a Loan Party with a bank or other financial institution, whether or not evidenced by an instrument, all cash and other funds held therein and all passbooks related thereto and all certificates and instruments, if any, from time to time representing, evidencing or deposited into such deposit accounts.

“Deposit Account Control Agreement” means a deposit account control agreement among the Collateral Agent, the Borrowers or other Loan Party maintaining a Deposit Account at any bank or financial institution (an “Account Bank”) and such Account Bank, which agreement shall be on terms reasonably satisfactory to the Administrative Agent, as the same may be amended, supplemented or otherwise modified from time to time.

“DIP ABL Agent” means Bank of America, N.A., in its capacity as agent under the DIP ABL Loan Agreement.

“DIP ABL Facility” means the credit facility contemplated by the DIP ABL Loan Agreement.

“DIP ABL Loan Agreement” means that certain post-petition credit agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time), by and among the Loan Parties, the DIP ABL Agent, and the lenders and other parties from time to time party thereto.

“DIP ABL Loan Documents” means the Credit Documents (as defined in the DIP ABL Loan Agreement).

“DIP ABL Priority Collateral” has the meaning given to that term in the applicable Order.

“DIP Term Credit Obligations” means, with respect to each Loan Party, without duplication:

(i) in the case of the Borrowers, all principal of, premium, if any, and interest (including, without limitation, any interest which accrues after the commencement of any proceeding under any Debtor Relief Law with respect to the Borrowers, whether or not allowed or allowable as a claim in any such proceeding) on, any Loan under, or any Note issued pursuant to, this Agreement or any other Loan Document;

(ii) all fees, expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party (including, without limitation, any amounts which accrue after the commencement of any proceeding under any Debtor Relief Law with respect to such Loan Party, whether or not allowed or allowable as a claim in any such proceeding) pursuant to this Agreement or any other Loan Document;

(iii) all expenses of the Administrative Agent as to which the Administrative Agent has a right to reimbursement by such Loan Party under Section 10.04(a) of this Agreement or under any other similar provision of any other Loan Document, including, without limitation, any and all sums advanced by the Collateral Agent to preserve the Collateral or preserve its security interests in the Collateral to the extent permitted under any Loan Document or applicable Law;

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04(b) of this Agreement or under any other similar provision of any other Loan Document; and

(v) in the case of Holdings and each Subsidiary Loan Party, all amounts now or hereafter payable by Holdings or such Subsidiary Loan Party and all other obligations or liabilities now existing or hereafter arising or incurred (including, without limitation, any amounts which accrue after the commencement of any proceeding under any Debtor Relief Law with respect to the Borrowers, Holdings or such Subsidiary Loan Party, whether or not allowed or allowable as a claim in any such proceeding) on the part of Holdings or such Subsidiary Loan Party pursuant to this Agreement, the Guaranty or any other Loan Document;

together in each case with all renewals, modifications, consolidations or extensions thereof.

“DIP Term Loan Facility” means the credit facility contemplated by this Agreement.

“DIP Term Loan Priority Collateral” has the meaning given to that term in the applicable Order.

“Disqualified Stock” means, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or Asset Sale so long as any rights of the holders thereof upon the occurrence of a change of control or Asset Sale event shall be subject to the prior repayment in full of the Loans and all other DIP Term Credit Obligations that are accrued and payable and the termination of the Commitments), (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is 91 days after the earlier of (x) the Maturity Date and (y) the date on which the Loans and all other DIP Term Credit Obligations that are accrued and payable are repaid in full and the Commitments are terminated; provided, however, that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; provided, further, however, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the U.S. Borrower or its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by the U.S. Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; provided, further; however, that any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

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

“Domestic Subsidiary” means any Subsidiary that is not a Foreign Subsidiary.

“Downstream Auction” has the meaning assigned to such term in Section 6.12(a)(i).

“Downstream Business” means the flat rolled products business conducted at the rolling mills in (i) Huntingdon, Tennessee, (ii) Newport, Arkansas, and (iii) Salisbury, North Carolina, and any assets, facilities, Real Property, personal property, plants, equipment, inventory, and accounts receivable associated therewith.

“Downstream Milestones” has the meaning assigned to such term in Section 6.12(a).

“Downstream Sale Motion” has the meaning assigned to such term in Section 6.12(a)(i).

“Downstream Sale Process” means the implementation of bidding and sale procedures in respect of all of the Debtors’ assets and property that comprise the Downstream Business, approved by an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders in all respects in their sole discretion. The order approving the Downstream Sale Process shall permit the Prepetition Term Lenders to credit bid all or any portion of the amounts outstanding under the Prepetition Term Loan Agreement and/or the DIP Term Loan Facility and shall contain expense reimbursements acceptable to the Required Lenders in their sole discretion.

“Effective Date” means the date this Agreement becomes effective in accordance with Section 10.11.

“environment” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

“Environmental Laws” means all applicable laws (including common law), rules, regulations, codes, ordinances, orders, decrees or judgments, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or Hazardous Materials).

“Equity Interests” of any person means any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity or ownership of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

“Equity Issuance” means the issuance of any common or preferred Equity Interests of Holdings, the U.S. Borrower or its Subsidiaries to any Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with Holdings, the U.S. Borrower or a Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (i) any Reportable Event or the requirements of Section 4043(b) of ERISA apply with respect to an ERISA Plan; (ii) the failure to meet the minimum funding standards of Sections 412 and 430 of the Code and Sections 302 and 303 of ERISA; (iii) the filing pursuant to Section 412(c) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any ERISA Plan or the failure to make any required contribution to a Multiemployer Plan; (iv) the incurrence by Holdings, the U.S. Borrower, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan or Multiemployer Plan; (v) the receipt by Holdings, the U.S. Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any ERISA Plan or to appoint a trustee to administer any ERISA Plan under Section 4042 of ERISA; (vi) the incurrence by Holdings, the U.S. Borrower, a Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any ERISA Plan or Multiemployer Plan; (vii) the receipt by Holdings, the U.S. Borrower, a Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from Holdings, the Borrowers, a Subsidiary or any ERISA Affiliate of any notice, concerning the impending imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (viii) the conditions for imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any ERISA Plan; or (ix) the adoption of an amendment to an ERISA Plan requiring the provision of security to such ERISA Plan pursuant to Section 307 of ERISA.

“ERISA Plan” shall mean any employee pension benefit plan, as such term is defined in Section 3(2) of ERISA (other than a Multiemployer Plan) (i) subject to the provisions of Title IV of ERISA, (ii) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by Holdings, either Borrower or any ERISA Affiliate, or (iii) in respect of which Holdings, the U.S. Borrower, any Subsidiary or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Eurodollar Base Rate” means:

(i) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum determined by the Administrative Agent as of approximately 11:00 a.m. (London time) on the date that is two London Banking Days prior to the commencement of such Interest Period (A) by reference to the ICE Benchmark Administration Interest Settlement Rates (or by reference to any successor or substitute entity or other quotation service providing comparable quotations to such ICE Benchmark Administration Interest Settlement Rates) (the “ICE LIBOR”) as published by Bloomberg L.P. (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Administrative Agent from time to time), for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (B) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank eurodollar market at its request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(i) for any interest rate calculation with respect to a Base Rate Loan, the rate per annum equal to (A) ICE LIBOR, at approximately 11:00 a.m., London time, determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (B) if such published rate is not available at such time for any reason, the rate determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank eurodollar market at its request at the date and time of determination.

“Eurodollar Rate Borrowing” means a Borrowing comprised of Eurodollar Rate Loans.

“Eurodollar Rate Loan” means at any date a Loan which bears interest at a rate based on the Adjusted Eurodollar Rate.

“Eurodollar Reserve Percentage” means for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any other entity succeeding to the functions currently performed thereby) for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to “Eurocurrency liabilities”). The Adjusted Eurodollar Rate for each outstanding Eurodollar

Rate Loan shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

“Event of Default” has the meaning assigned to such term in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Indebtedness” means all Indebtedness permitted to be incurred under Section 7.01.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) in the case of a Foreign Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Foreign Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (A) such Foreign Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower Representative under Section 10.14) or (B) such Foreign Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or Section 3.01(c), amounts with respect to such Taxes were payable either to such Foreign Lender’s assignor immediately before such Foreign Lender became a party hereto or to such Foreign Lender immediately before it changed its Lending Office, (iii) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (iv) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Exempt Deposit Accounts” means (i) Deposit Accounts the balance of which consists exclusively of (A) withheld income taxes and federal, state or local employment taxes in such amounts as are required in the reasonable judgment of the applicable Borrower to be paid to the Internal Revenue Service or state or local government agencies with respect to employees of any of the Loan Parties and (B) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of one or more Loan Parties and (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) taxes accounts, payroll accounts, and trust or similar accounts.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements entered into pursuant to the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Final Order” means a final order of the Bankruptcy Court in substantially the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications are satisfactory in form and substance to Administrative Agent and the Required Lenders in their reasonable discretion) and authorizing the Delayed Draw Term Loans.

“Final Order Entry Date” means the date on which the Final Order is entered by the Bankruptcy Court.

“Finance Obligations” means, at any date, all DIP Term Credit Obligations.

“Financial Officer” of any person means the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such person.

“Foreign Lender” means a Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any State thereof or the District of Columbia.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Closing Date. For purposes herein, the term “consolidated” means such Person consolidated with the Subsidiaries.

“Glencore Credit Agreement” means that certain credit agreement, dated as of December 29, 2012, between the Jamaican Borrower, as borrower, and Surela Investments Ltd.

“Governmental Authority” means any federal, state, provincial, territorial, municipal, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Guarantee” of or by any person (the “guarantor”) means (i) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (A) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligation, (B) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (C) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (D) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part) or (E) as an account party in respect of any letter of credit, bank guarantee or other letter of guaranty issued to support such Indebtedness or other obligation, or (ii) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, the term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course

of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“guarantor” has the meaning assigned to such term in the definition of the term “Guarantee.”

“Guarantor” means any of Holdings and the Subsidiary Loan Parties and “Guarantors” means two or more of them, collectively.

“Guaranty” means, collectively, the guaranty made by Holdings and the Subsidiary Loan Parties under the Collateral Agreement in favor of the Secured Parties, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.10.

“Hazardous Materials” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including, without limitation, explosive or radioactive substances or petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls or radon gas, of any nature subject to regulation or which can give rise to liability under any Environmental Law.

“Holdings” has the meaning assigned to such term in the preamble to this Agreement.

“Indebtedness” of any person means, without duplication, (i) all obligations of such person for borrowed money, (ii) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (iv) all obligations of such person issued or assumed as the deferred purchase price of property or services, to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (v) all Capital Lease Obligations of such person, (vi) all net payments that such person would have to make in the event of an early termination, on the date Indebtedness of such person is being determined, in respect of outstanding Swap Contracts, (vii) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of letters of credit and bank guarantees, (viii) the principal component of all obligations of such person in respect of bankers’ acceptances, (ix) all Guarantees by such person of Indebtedness described in clauses (i) through (viii) above and (x) the amount of all obligations of such person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock); provided, that Indebtedness shall not include (A) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business, (B) prepaid or deferred revenue arising in the ordinary course of business, (C) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset or (D) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such person in respect thereof.

“Indemnified Taxes” means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (ii) to the extent not otherwise described in clause (i), Other Taxes.

“Indemnatee” has the meaning assigned to such term in Section 10.04(b).

“Information” has the meaning assigned to such term in Section 10.07.

“Initial Term Loans” has the meaning assigned to such term in Section 2.01(a).

“Initial Term Loan Commitment” means the commitment of a Lender to make or otherwise fund any Initial Term Loan on the Closing Date, and “Initial Term Loan Commitments” means such commitments of all Lenders in the aggregate on the Closing Date (before giving effect to the Initial Term Loans made on the Closing Date). The amount of each Lender’s Initial Term Loan Commitment as of the Closing Date is set forth on Schedule 2.01 and the aggregate amount of the Initial Term Loan Commitments as of the Closing Date is \$25,000,000 (in each case, before giving effect to the Initial Term Loans made on the Closing Date).

“Intellectual Property Rights” has the meaning assigned to such term in Section 4.23.

“Intercreditor Agreement” means that certain intercreditor agreement dated as of February 29, 2012 among Holdings, the U.S. Borrower, the Prepetition Term Agent and the Prepetition ABL Agent.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.05 substantially in the form of Exhibit G hereto.

“Interest Expense” means, with respect to any person for any period, the sum of (i) gross interest expense of such person and its subsidiaries for such period on a consolidated basis whether paid or accrued, including (A) the amortization of debt discounts, (B) the amortization of all fees (including fees with respect to Swap Contracts) payable in connection with the incurrence of Indebtedness to the extent included in interest expense, commissions, discounts and other fees and charges incurred in respect of letters of credit, (C) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (D) net payments and receipts (if any) pursuant to interest rate Swap Contracts) and (ii) capitalized interest of such person. For purposes of the foregoing, gross interest expense shall be determined after giving effect to any net payments made or received and costs incurred by the U.S. Borrower and its Subsidiaries with respect to interest rate Swap Contracts, and interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the U.S. Borrower to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP.

“Interest Payment Date” means (i) with respect to any Eurodollar Rate Loan, the last Business Day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Rate Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing and, in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type and (ii) with respect to any Base Rate Loan, the last Business Day of each March, June, September and December.

“Interest Period” means, as to any Eurodollar Rate Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no

numerically corresponding day, on the last day) in the calendar month that is 1, 2, 3 or 6 months thereafter as the Borrower Representative may elect, or the date any Eurodollar Rate Borrowing is converted to a Base Rate Borrowing in accordance with Section 2.05 or repaid or prepaid in accordance with Section 2.06, 2.07 or 2.08; provided, however, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“Interim Order” means an interim order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in the form set forth as Exhibit B, with changes to such form as are reasonably satisfactory to the Administrative Agent and the Required Lenders in their sole discretion, approving the Loan Documents and the DIP ABL Loan Documents.

“Interim Order Entry Date” means the date on which the Interim Order is entered by the Bankruptcy Court.

“Investment” has the meaning assigned to such term in Section 7.04.

“Jamaica Funding Date” means the date of any Credit Event on which Loans are made to the Jamaican Borrower.

“Jamaican Borrower” has the meaning assigned thereto in the preamble to this Agreement.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of Law.

“Lender” means each financial institution listed on Schedule 2.01 (other than any such person that ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.06) and any person that becomes a “Lender” hereunder pursuant to Section 10.06.

“Lending Office” means with respect to any Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in such Lender’s Administrative Questionnaire or in any applicable Assignment and Acceptance pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower Representative as the office by which its Loans of such Type are to be made and maintained.

“Lien” means, with respect to any asset, (i) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset or (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, provided, that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

“Loan Documents” means this Agreement, the Security Documents, the Agent Fee Letter, the Intercreditor Agreement, and any Note issued under Section 2.06(e).

“Loan Parties” means Holdings, the Borrowers and the Subsidiary Loan Parties.

“Loans” means the Initial Term Loans and the Delayed Draw Term Loans.

“Local Time” means New York City time.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Material Adverse Effect” means a material adverse effect on the business, property, operations or condition of U.S. Borrower and its Subsidiaries, taken as a whole, or the validity or enforceability of any of the material Loan Documents or the rights and remedies of the Administrative Agent and the Lenders thereunder; provided that the term “Material Adverse Effect” will not be deemed to exist as a result of the Cases or the circumstances and events leading up thereto.

“Material Indebtedness” means Indebtedness (other than Loans) of any one or more of the Borrower or any Subsidiary in an aggregate principal amount exceeding \$25,000,000.

“Maturity Date” means the earlier of the date which is (i) nine months following the Closing Date, (ii) the earlier of the date (x) the Borrower enters into (or files a motion with the Bankruptcy Court or otherwise takes action to pursue the Bankruptcy Court for approval of) a purchase agreement, unless such purchase agreement is entered into in connection with an auction conducted pursuant to the order approving the Downstream Sale Process or the Upstream Sale Process and (y) the Borrower files a motion or otherwise takes action to pursue the Bankruptcy Court for approval of a sale (other than an auction conducted pursuant to the order approving the Downstream Sale Process or the Upstream Sale Process); (iii) the consummation of a sale of all or substantially all of the assets of the Borrower pursuant to Section 363 of the U.S. Bankruptcy Code or otherwise; (iv) the effective date of a plan of reorganization or liquidation in the Cases; (v) the date of filing or support by the Borrower of a plan of reorganization that does not provide for indefeasible payment in full in cash of all obligations owing under the DIP Term Loan Facility or (vi) the date of termination of the Commitments and the acceleration of any outstanding extensions of credit, in each case, under the DIP Term Loan Facility in accordance with the terms of this Agreement.

“Maximum Rate” has the meaning assigned to such term in Section 10.10.

“Milestones” means, collectively, the Downstream Milestones, the Plan Milestones and the Upstream Milestones.

“Monthly Budget” means a monthly income statement, balance sheet and statement of cash flows of Holdings and its Subsidiaries on a consolidated and consolidating by segment basis through the pendency of the Cases, in form and substance consistent with the Budget.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgaged Properties” means the Real Properties owned in fee by the Loan Parties that are set forth on Schedule 1.01 and each additional Real Property encumbered by a Mortgage pursuant to Section 6.10.

“Mortgages” means, collectively, the mortgages, trust deeds, deeds of trust, deeds to secure debt, assignments of leases and rents, and other security documents delivered with respect to Mortgaged Properties, each substantially in the form of Exhibit D (with such changes as are reasonably consented to by the Administrative Agent to account for local law matters), as amended, supplemented or otherwise modified from time to time.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower, Holdings or any Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

“Net Proceeds” means:

(i) 100% of the cash proceeds actually received by the Borrower or any Subsidiary Loan Party (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise and including casualty insurance settlements and condemnation awards, but only as and when received) from any Asset Sale (other than those pursuant to Section 7.05(a), (e), (f) or (i)), net of (A) attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer Taxes, deed or mortgage recording Taxes, required debt payments and required payments of other obligations relating to the applicable asset to the extent such debt or obligations are secured by a Lien permitted hereunder (other than pursuant to the Loan Documents) on such asset, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith, (B) Taxes paid or payable as a result thereof, and (C) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any Taxes deducted pursuant to clause (A) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of its Subsidiaries including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Proceeds of such Asset Sale occurring on the date of such reduction); provided, that, if no Event of Default exists and the Borrower shall deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent promptly following receipt of any such proceeds setting forth (x) the Borrower’s intention to use any portion of such proceeds, to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business of the Borrower and its Subsidiaries within nine months of such receipt and that such usage of such proceeds is contemplated by the Budget in most recently delivered by the Borrower in accordance with Section 6.04(k), such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within nine months of such receipt, so used or contractually committed to be so used (it being understood that if any portion of such proceeds are not so used within such nine-month period but within such nine-month period are contractually committed to be used, then, upon the termination of such contract, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); provided, further, that no proceeds shall constitute Net Proceeds unless the aggregate amount of all such proceeds shall exceed \$1,000,000; and

(ii) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any Subsidiary Loan Party of any Equity Issuance or Indebtedness (other than Excluded Indebtedness), net of all Taxes and fees (including investment banking fees), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale.

For purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to the Borrower or any Affiliate of the Borrower shall be disregarded.

“Non-Consenting Lender” has the meaning assigned to such term in Section 10.01.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” has the meaning assigned to such term in Section 2.06(e).

“Orders” means collectively, the Interim Order and the Final Order.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax, other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06). Other Taxes shall not include any Taxes imposed on, or measured by reference to, gross income, net income or gain.

“Participant” has the meaning assigned to such term in Section 10.06(d).

“Participant Register” has the meaning assigned to such term in Section 10.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Perfection Certificate” means the Perfection Certificate with respect to Borrower and the other Loan Parties in a form reasonably satisfactory to the Administrative Agent.

“Permitted Holder” means the group consisting of the directors, executive officers and other key management personnel of the U.S. Borrower, Holdings and their Subsidiaries, as the case may be, on the Closing Date together with (i) any new directors whose election by such Boards of Directors or whose nomination for election by the shareholders of the U.S. Borrower or Holdings, as the case may be, was approved by a vote of a majority of the directors of the U.S. Borrower or Holdings, as the case may be, then still in office who were either directors on the Closing Date or whose election or nomination was previously so approved and (ii) executive officers and other key management personnel of the U.S. Borrower or Holdings and their Subsidiaries, as the case may be, hired at a time when the directors on the

Closing Date together with the directors so approved constituted a majority of the directors of the U.S. Borrower or Holdings, as the case may be.

“Permitted Investments” means:

(i) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case with maturities not exceeding two years;

(ii) bank deposits, checking accounts, time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of \$250,000,000 and whose long term debt, or whose parent holding company's long term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(iii) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (i) above entered into with a bank meeting the qualifications described in clause (ii) above;

(iv) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of the Borrower) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P 1 (or higher) according to Moody's, or A 1 (or higher) according to S&P;

(v) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's;

(vi) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (i) through (v) above;

(vii) money market funds that (A) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (B) are rated AAA by S&P and Aaa by Moody's and (C) have portfolio assets of at least \$5,000,000,000;

(viii) time deposit accounts, certificates of deposit and money market deposits (in each case with or from a bank meeting the qualifications described in clause (ii) above) in an aggregate face amount not in excess of 0.50% of the total assets of the Borrower and its Subsidiaries, on a consolidated basis, as of the end of the Borrower's most recently completed fiscal year; and

(ix) instruments equivalent to those referred to in clauses (i) through (viii) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any

jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.

“Permitted Liens” has the meaning assigned to such term in Section 7.02.

“Permitted Variance” has the meaning assigned to such term in Section 6.15.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

“Petition Date” has the meaning assigned thereto in the preamble to this Agreement.

“Plan Filing Date” has the meaning assigned to such term in Section 6.12(a)(v).

“Plan Milestones” has the meaning assigned to such term in Section 6.12(b)

“Platform” has the meaning assigned to such term in Section 10.08.

“Pledged Collateral” has the meaning assigned to such term in the Collateral Agreement.

“Prepetition ABL Agent” means Bank of America, N.A.

“Prepetition ABL Credit Agreement” means the Credit Agreement dated as of February 29, 2012 among Holdings, the Borrower, the Domestic Subsidiaries of Holdings named therein as guarantors or borrowers, the banks and other lending institutions party thereto from time to time, the Prepetition ABL Agent, and the other agents named therein, as amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

“Prepetition ABL Lenders” means the lenders under the Prepetition ABL Credit Agreement.

“Prepetition Term Agent” means Cortland Capital Market Services LLC.

“Prepetition Term Lenders” means the lenders under the Prepetition Term Loan Agreement.

“Prepetition Term Loan Agreement” means that certain Credit Agreement, dated as of February 29, 2012, by and among the Borrower, Holdings, the Prepetition Term Agent and the lenders identified therein, as amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

“Prepetition Term Loans” means the loans under the Prepetition Term Loan Agreement.

“Primed Liens” has the meaning assigned to such term in Section 2.12(c).

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent).

“Professional Fees” means the fees and reimbursable expenses of Professional Persons.

“Professional Person” means a Person who is an attorney, financial advisor, accountant, appraiser, auctioneer or other professional person and who is retained, with Bankruptcy Court approval, by (a) the Borrower Representative pursuant to Section 327 of the Bankruptcy Code or (b) a Committee pursuant to Section 1103(a) of the Bankruptcy Code.

“Public Lender” has the meaning assigned to such term in Section 10.08.

“Qualified Equity Interests” means any Equity Interests other than Disqualified Stock.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning assigned to such term in Section 10.06(c).

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified person, such person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such person and such person’s Affiliates.

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the environment.

“Removal Effective Date” has the meaning assigned to such term in Section 9.06(b).

“Reorganization Plan” means a liquidation plan or plan of reorganization in any or all of the Cases of the Debtors.

“Reportable Event” means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to an ERISA Plan (other than an ERISA Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“Required Lenders” means, at any time, Lenders having Loans outstanding, that taken together, represent more than 50% of the sum of (i) all Loans outstanding at such time and (ii) all unfunded Commitments at such time. The Loans and Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Resignation Effective Date” has the meaning assigned to such term in Section 9.06(a).

“Responsible Officer” of any person means any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

“Restricted Payments” has the meaning assigned to such term in Section 7.06.

“S&P” means Standard & Poor’s Ratings Group, Inc.

“Sanctioned Entity” means (a) an agency of the government of, (b) an organization directly or indirectly controlled by, or (c) a Person resident in, a country that is subject to a sanctions program identified on the list maintained and published by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs>, or as otherwise published from time to time as such program may be applicable to such agency, organization or Person.

“Sanctioned Person” means a Person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>, or as otherwise published from time to time.

“SEC” means the Securities and Exchange Commission or any successor thereto.

“Secured Parties” means the “Secured Parties” as defined in the Collateral Agreement.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Documents” means the Mortgages, the Collateral Agreement and each of the security agreements and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 6.10.

“Senior Notes” means the Borrower’s floating rate senior notes due 2015, issued pursuant to the Senior Notes Indenture and outstanding on the Closing Date.

“Senior Notes Indenture” means the Indenture dated as of May 18, 2007 under which the Senior Notes were issued, among the Borrower and certain of its Subsidiaries party thereto and the trustee named therein from time to time, as in effect on the Closing Date and as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof and of this Agreement.

“Sherwin” means Sherwin Alumina Company, LLC.

“Sherwin Contract” means that certain Bauxite Sales Agreement dated as of December 29, 2012 between the Jamaican Borrower and Sherwin.

“Sherwin Settlement” means a settlement agreement, in form and substance acceptable to the Required Lenders, between the Jamaican Borrower and Sherwin and regarding the Sherwin Contract and any and all claims and counterclaims between Sherwin and the Debtors, including, but not limited to, any claims arising from or relating to the Glencore Credit Agreement.

“subsidiary” means, with respect to any person (herein referred to as the “parent”), any corporation, partnership, association or other business entity (i) of which securities or other ownership

interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held, or (ii) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means, unless the context otherwise requires, a subsidiary of the U.S. Borrower.

“Subsidiary Loan Party” means (i) each Wholly Owned Domestic Subsidiary of the U.S. Borrower, whether existing on the Closing Date or formed or acquired thereafter, and (ii) each other Subsidiary of the U.S. Borrower that, in the sole discretion of the Borrower Representative, becomes a party to the Collateral Agreement (or a comparable agreement mutually agreed, each in their sole discretion, by the Borrowers and the Administrative Agent) after the Closing Date.

“Superpriority Claim” means a claim against any Debtor in any of the Cases which is an administrative expense claim having priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the U.S. Bankruptcy Code, and over any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the U.S. Bankruptcy Code.

“Swap Contract” means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement; provided, that (i) no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings, the U.S. Borrower or any of its Subsidiaries, and (ii) no contract for the purchase of natural gas of which any Loan Party intends to take delivery from a counterparty in the business of supplying natural gas, shall be a Swap Contract.

“Swap Obligations” of any Person means all obligations (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to such Person, whether or not allowed or allowable as a claim under any proceeding under any Debtor Relief Law) of such Person in respect of any Swap Contract.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (i) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i), the amount(s) determined as the mark-to-market value(s) for such Swap

Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Transaction Documents” means the Prepetition ABL Credit Agreement, DIP ABL Loan Documents and the Loan Documents.

“Transactions” means the (i) execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of the Loans hereunder, the use of the proceeds thereof, and the payment of fees and expenses related to the foregoing and (ii) execution, delivery and performance by the Loan Parties of DIP ABL Loan Documents, the borrowings and other extensions of credit under the DIP ABL Facility, the use of the proceeds thereof, and the payment of fees and expenses related to the foregoing.

“Type” means, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” shall include the Adjusted Eurodollar Rate and the Base Rate.

“Unfunded Pension Liability” means the excess of an ERISA Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that ERISA Plan’s assets, determined in accordance with the assumptions used for funding the ERISA Plan pursuant to Section 412 of the Code for the applicable plan year.

“Uniform Commercial Code or UCC” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Upstream Auction” has the meaning assigned to it in Section 6.12(c).

“Upstream Business” means any business of the Debtors that is not part of the Downstream Business.

“Upstream Milestones” has the meaning to it assigned to it in Section 6.12(c).

“Upstream Sale Motion” has the meaning assigned to it in Section 6.12(c).

“Upstream Sale Process” means the implementation of bidding and sale procedures in respect of all of the Debtors’ assets and property that comprise the “Upstream Business,” approved by an order of the Bankruptcy Court, in form and substance reasonably acceptable to the Required Lenders in all respects. The order approving the Upstream Sale Process shall permit the Prepetition Term Lenders to credit bid all or any portion of the amounts outstanding under the Prepetition Term Loan Agreement and/or the DIP Term Facility.

“U.S. Bankruptcy Code” means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“U.S. Borrower” has the meaning assigned thereto in the preamble to this Agreement.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“Variance Report” means a variance report on a weekly basis setting forth (i) actual Operating Sales, Non-Operating Sales, Operating Disbursements, Payroll Disbursements, CAPEX Disbursements, Other Disbursements and, Operating Cash Flow, Net Cash Flow, Beginning and Ending Cash, Borrowing Base, Beginning and Ending ABL, Beginning and ending DIP Term Loan balance (as referred to in the Budget) for the prior week, (ii) all variances, including Permitted Variances, on an individual line item basis, segment basis and an aggregate basis, as compared to the Budget on a weekly and cumulative basis, and (iii) an explanation, in reasonable detail, for any material variance, certified by a Financial Officer of Holdings.

“Wholly Owned Domestic Subsidiary” of any person means a subsidiary of such person that is both a Domestic Subsidiary and a Wholly Owned Subsidiary.

“Wholly Owned Foreign Subsidiary” of any person means a subsidiary of such person that is both a Foreign Subsidiary and a Wholly Owned Subsidiary.

“Wholly Owned Subsidiary” of any person means a subsidiary of such person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such person or another Wholly Owned Subsidiary of such person.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Section 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements hereof and thereof. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, that, if the Borrower Representative notifies the Administrative Agent that the Borrower Representative requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.03 Effectuation of Transactions. Each of the representations and warranties of Holdings and the Borrowers contained in this Agreement (and all corresponding definitions) are made after giving effect to the Transactions, unless the context otherwise requires.

ARTICLE II THE CREDITS

Section 2.01 DIP Term Loan Facility.

(a) Initial Term Loans. Each Lender having an Initial Term Loan Commitment agrees, severally and not jointly, to make, subject to satisfaction (or waiver by all such Lenders having Initial Term Loan Commitments identified on Schedule 2.01) of the conditions precedent set forth in Sections 5.01 and 5.02, upon written request by the Borrower Representative upon or after the entry of the Interim Order, Loans to the Borrowers, in a principal amount up to such Lender's Initial Term Loan Commitment (collectively, the "Initial Term Loans"), in multiple Borrowings from the Interim Order Entry Date until the Final Order Entry Date; provided that the aggregate amount of Loans made to the Jamaican Borrower shall not exceed (x) \$6,000,000, prior to the date that is 90 days after the Petition Date and (y) an amount to be agreed by the Lenders in their sole discretion, thereafter. Amounts prepaid or repaid in respect of the Initial Term Loans may not be reborrowed.

(b) Delayed Draw Term Loans. Each Lender having a Delayed Draw Term Loan Commitment agrees, severally and not jointly, to make, subject to satisfaction (or waiver by all such Lenders having Delayed Draw Term Loan Commitments identified on Schedule 2.01) of the conditions precedent set forth in Sections 5.01 and 5.03, upon written request by the Borrower Representative upon or after the entry of the Final Order, Loans to the Borrowers in a principal amount up to such Lender's Delayed Draw Term Loan Commitment (collectively, the "Delayed Draw Term Loans") in multiple Borrowings from the Final Order Entry Date until [●]; provided that the aggregate amount of Loans made to the Jamaican Borrower shall not exceed (x) \$6,000,000, prior to the date that is 90 days after the Petition Date and (y) an amount to be agreed by the Lenders in their sole discretion, thereafter. Amounts prepaid or repaid in respect of the Delayed Draw Term Loans may not be reborrowed.

(c) The Delayed Draw Term Loans and Initial Term Loans shall constitute a single class of Loans for all purposes of this Agreement and the other Loan Documents.

(d) The outstanding principal amount of the Loans, together with accrued and unpaid interest thereon, shall be due and payable on the Maturity Date.

Section 2.02 Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided, that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 3.03, each Borrowing shall be comprised entirely of Base Rate Loans or Eurodollar Rate Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Base Rate Loan or Eurodollar Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided, that any exercise of such option shall not affect how the Loan is recorded in the Register or the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 3.01 or 3.04 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(c) Borrowings of more than one Type may be outstanding at the same time; provided, that there shall not at any time be more than a total of five Eurodollar Rate Borrowings outstanding under the DIP Term Loan Facility.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03 Requests for Borrowings. To request a Borrowing, the Borrower Representative shall notify the Administrative Agent of such request in writing in the form of the Borrowing Request (a) in the case of a Eurodollar Rate Borrowing, not later than 12:00 p.m., Local Time, three Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 12:00 p.m., Local Time, two Business Days before the date of the proposed Borrowing. Each such written Borrowing Request shall be irrevocable, signed by a Responsible Officer of the Borrower Representative, and specify the following information in compliance with Section 2.02:

- (i) the Borrower who will be Borrowing;
- (ii) the aggregate amount of the requested Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be a Base Rate Borrowing or a Eurodollar Rate Borrowing;
- (v) in the case of a Eurodollar Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vi) the location and number of the applicable Borrower's account to which funds are to be disbursed.

If the Borrower Representative fails to specify a Type of Loan in a Borrowing Request or if the Borrower Representative fails to give a timely notice requesting a conversion or continuation, then the Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If no Interest Period is specified with respect to any requested Eurodollar Rate Borrowing, then the Borrower Representative shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender in writing of the contents thereof, including the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Funding of Borrowings. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 p.m., Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all amounts requested in the Borrowing Request, the Administrative Agent will make such Loans available to the applicable Borrower by promptly crediting the amounts so received, in like funds, to an account of the applicable Borrower as specified in the Borrowing Request.

Section 2.05 Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Rate Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Rate Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election in writing in the form of the Interest Election Request by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election.

(c) Each written Interest Election Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Rate Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Rate Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

(v) If any such Interest Election Request requests a Eurodollar Rate Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender to which such Interest Election Request relates of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Eurodollar Rate Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Rate Borrowing and (ii) unless repaid, each Eurodollar Rate Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto.

Section 2.06 Agreement to Repay Loans; Evidence of Debt. (a) Each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan of such Lender as provided in Section 2.07.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section 2.06 shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of each Borrower to repay the Loans in accordance with the terms of this Agreement. In the case of a conflict between the account maintained pursuant to paragraphs (b) and (c) of this Section 2.06, the entries in the account maintained by the Administrative Agent shall control.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note (a "Note"). In such event, the Borrower Representative shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form approved by the Administrative Agent and reasonably acceptable to the Borrower Representative. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.06) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.07 Repayment of Loans. The Borrowers shall pay the aggregate principal amount of all Loans outstanding, together with accrued and unpaid interest thereon, on the Maturity Date.

Section 2.08 Prepayment of Loans and Termination of Commitments.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Loan in whole or in part, without premium or penalty (subject to Section 3.05), in an aggregate principal amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum or, if less, the amount outstanding, subject to prior notice in accordance with the below, which notice shall be irrevocable. Each prepayment made pursuant to this Section 2.08(a) shall be made upon notice to the Administrative Agent, in a writing appropriately signed by a Responsible Officer of the Borrower Representative, which notice must be received by the Administrative Agent not later than 1:00 p.m. Local Time (x) one Business Day prior to any date of prepayment of Eurodollar Rate Loans and (y) on the date of prepayment of Base Rate Loans. Each written notice by the Borrower Representative pursuant to this Section 2.08(a) must be confirmed promptly by delivery to the Administrative Agent of a written prepayment notice, appropriately completed and signed by a Responsible Officer of the Borrower Representative. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's percentage). If such notice is given by the Borrower Representative, the applicable Borrower shall make

such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan under this Section 2.08(a) shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(b) The Borrowers shall have the right at any time and from time to time to reduce the Commitments, without premium or penalty, in an aggregate principal amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum, subject to prior notice in accordance with the below, which notice shall be irrevocable. Each reduction made pursuant to this Section 2.08(b) shall be made upon written notice to the Administrative Agent, signed by a Responsible Officer of the Borrower Representative, which notice must be received by the Administrative Agent not later than 1:00 p.m. Local Time one Business Day prior to any date of reduction. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such reduction (based on such Lender's percentage (carried out to the ninth decimal place)).

(c) Subject to the Intercreditor Agreement, Section 6.13 and the Orders, the Borrowers shall apply all Net Proceeds of any DIP Term Loan Priority Collateral (including casualty events or condemnation) promptly upon receipt thereof to prepay Loans and the Prepetition Term Loans.

Section 2.09 Fees. (a) The U.S. Borrower agrees to pay to the Administrative Agent, for the account of the Administrative Agent, all fees as stated in the Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason.

(b) The U.S. Borrower shall pay to Administrative Agent, for the account of each Lender in accordance with its pro rata share of the Commitments, a closing fee (the "Closing Fee") in an amount equal to 4.0% of the aggregate Commitments as of the Closing Date (before giving effect to the Loans to be made on the Closing Date), which shall be due and payable on the Closing Date. Such Closing Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(c) All fees shall be paid on the dates due, in immediately available funds. Once paid, none of the Fees shall be refundable under any circumstances.

Section 2.10 Interest. (a) The Loans comprising each Base Rate Borrowing shall bear interest at a rate per annum equal to the sum of (i) the greater of (x) the Base Rate and (y) 2.00% plus (ii) the Applicable Margin.

(b) The Loans comprising each Eurodollar Rate Borrowing shall bear interest for each Interest Period applicable thereto at a rate per annum equal to the sum of (i) the greater of (x) the Adjusted Eurodollar Rate for such Interest Period and (y) 1.00% plus (ii) the Applicable Margin.

(c) Notwithstanding the foregoing, immediately on the occurrence and during the continuance of any Event of Default, the outstanding principal amount of the Loans and any overdue amounts shall bear interest or earn fees at a rate (the "Default Rate") per annum equal to 2.0% plus the rate otherwise applicable thereto and such interest shall be payable on demand.

(d) Accrued interest on each Loan shall be payable in arrears (i) on each Interest Payment Date for such Loan and (ii) on the Maturity Date; provided, that (i) interest accrued pursuant to paragraph (c) of this Section 2.10 shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Rate

Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Base Rate (including Base Rate Loans determined by reference to the Adjusted Eurodollar Rate) shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, Adjusted Eurodollar Rate or Eurodollar Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.11 Payments Generally; Pro Rata Treatment; Sharing of Set offs. (a) Unless otherwise specified, each Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or of amounts payable under Section 3.01, 3.04 or 3.05, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower Representative by the Administrative Agent, except that payments pursuant to Sections 3.01, 3.04, 3.05 and 10.04 shall be made directly to the persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under the Loan Documents shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) If at any time insufficient funds are received by and available to the Administrative Agent from the applicable Borrower to pay fully all amounts of principal, interest and fees then due from such Borrower hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due from such Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (i) DIP Term Credit Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such DIP Term Credit Obligations due and payable to such Lender at such time to (y) the aggregate amount of the DIP Term Credit Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the DIP Term Credit Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time or (ii) DIP Term Credit Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such DIP Term Credit Obligations owing (but not due and payable) to such Lender at such time to (y) the aggregate amount of the DIP Term Credit Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on

account of the DIP Term Credit Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time then the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of DIP Term Credit Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to such Borrower unless, in the case of an assignment of Loans to such Borrower, such assignment is made in accordance with Section 10.06 hereof.

Each Borrower consents to the foregoing Section 2.11(c) and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against any Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower Representative prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that a Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon Local Time on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to such Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and such Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or

similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.12 Priority and Liens. As set forth in the Orders, all DIP Term Credit Obligations of the Loan Parties shall constitute and be deemed a cost and expense of administration in the Cases and shall be entitled to administrative status under Section 503(b) of the Bankruptcy Code and priority under Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over all other obligations, liabilities, and indebtedness of each Loan Party, whether now in existence or hereafter incurred by any Loan Party, and over any and all costs and expenses of administration incurred in any of the Cases or in any superseding Chapter 7 case, but subject to the Carve-Out. The DIP Term Credit Obligations shall be secured by security interests in and Liens upon all real and personal property of the Loan Parties as and to the extent set forth in the Security Documents and each Order, pursuant to Sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, with the priorities set forth in the Orders.

Section 2.13 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees, indemnity payments or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.09 shall be applied at such time or times as may be determined by the Administrative Agent and the Borrower Representative as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower Representative may request, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower Representative, to be held in a Deposit Account and released pro-rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower Representative as a result of any judgment of a court of competent jurisdiction obtained by the Borrower Representative against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not

fully funded its appropriate share, and (y) such Loans were made were issued at a time when the conditions set forth in Section 5.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro-rata in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower Representative and the Administrative Agent in their sole discretion agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro-rata basis by the Lenders in accordance with their percentages (carried out to the ninth decimal place) of the applicable Facility, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of either Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.14 Borrower Representative. Each Borrower hereby appoints the U.S. Borrower as its agent to act as the "Borrower Representative" hereunder. The U.S. Borrower hereby accepts the appointment by each Borrower to act as the Borrower Representative pursuant to this Section 2.14. Each Borrower hereby authorizes the Borrower Representative to provide the Administrative Agent with all notices with respect to the Loans and the other extensions of credit hereunder and all other notices and instructions related to the Loans and the other extensions of credit under this Agreement and the other Loan Documents and (ii) to take such action as the Borrower Representative deems appropriate on its behalf to obtain the Loans and the other extensions of credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement and the other Loan Documents. Any notice, election, representation, warranty, agreement or undertaking by or on behalf of such Borrower by the Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if made directly by such Borrower.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent or Loan Party) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding Taxes, from any payment, then (A) such Loan Party or the Administrative Agent shall withhold or make such deductions as are determined by such Loan Party or the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions for Indemnified Taxes (including deductions for Indemnified Taxes applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction of Indemnified Taxes been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions for Indemnified Taxes (including deductions for Indemnified Taxes applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction of Indemnified Taxes been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Without duplication of any additional amounts paid pursuant to Section 3.01(a), each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower Representative by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and

without limiting the obligation of the Loan Parties to do so), (y) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower Representative or the Administrative Agent, as the case may be, after any payment of Taxes by any Loan Party or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower Representative shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower Representative, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower Representative or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrower Representative or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B), (ii)(C) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is a U.S. Person (or, if such Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, is owned by a U.S. Person) shall deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the

Administrative Agent), duly completed and executed originals of IRS Form W-9 certifying that such Lender or such U.S. Person, as applicable, is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, the Person treated as its owner for U.S. Federal tax purposes) eligible for the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, duly completed and executed originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, duly completed and executed originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) duly completed and executed originals of IRS Form W-8ECI with respect to such Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, with respect to the Person treated as its owner for U.S. Federal tax purposes);

(3) in the case of a Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, the Person treated as its owner for Federal tax purposes) entitled to the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of either Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) duly completed and executed originals of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender (or, if such Foreign Lender is disregarded as an entity separate from its owner for U.S. Federal tax purposes, the Person treated as its owner for U.S. Federal tax purposes) is not the beneficial owner, duly completed and executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax

Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower Representative or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrower Representative and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall promptly (x) update such form or certification or (y) notify the Borrower Representative and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient receives a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will any Recipient be required to pay any amount to a Loan Party pursuant to this paragraph (f) the payment of which would replace the Recipient in a less favorable net after-Tax position than the Recipient would have been in if the Tax subject to indemnification and giving

rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other obligations under any Loan Document.

Section 3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Base Rate, or to determine or charge interest rates based upon the Eurodollar Base Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on written notice thereof by such Lender to the Borrower Representative through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Base Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Base Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower Representative in writing that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower Representative shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Base Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Base Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Base Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Base Rate. Each Lender agrees to notify the Administrative Agent and the Borrower Representative in writing promptly upon becoming aware that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Base Rate. Upon any such prepayment or conversion, the Borrower Representative shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 Inability to Determine Rates. If the Required Lenders advise the Administrative Agent prior to a Eurodollar Rate Borrowing, or a conversion of a Base Rate Loan to a Eurodollar Rate Loan or a continuation of a Eurodollar Rate Loan that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (ii) adequate and reasonable means do not exist for determining the Eurodollar Base Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan or (iii) the Eurodollar Base Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will as promptly as

practicable so notify the Borrower Representative (by electronic mail) and each Lender. Thereafter, (x) any Interest Election Request that requests the conversion of any Base Rate Loan to a Eurodollar Rate Loan or the continuation of a Eurodollar Rate Loan shall be ineffective, (y) if any Borrowing Request requests a Eurodollar Rate Borrowing, then such Borrowing shall be made as a Base Rate Borrowing and (z) in the event of a determination described in the preceding sentence with respect to the Eurodollar Base Rate component of the Base Rate, the utilization of the Eurodollar Base Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Notwithstanding anything to the contrary contained herein, upon receipt of such notice, the Borrower Representative may revoke any pending request for a Eurodollar Rate Borrowing, conversion of a Base Rate Loan to a Eurodollar Rate Loan or a continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits with or for the account of, or credit extended or participated in by, any Lender (or its applicable Lending Office) (except any reserve requirement which is reflected in the determination of the Adjusted Eurodollar Rate hereunder);

(ii) subject to any Recipient to any Taxes other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender (or its applicable Lending Office) or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its applicable Lending Office) of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Base Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower or Borrowers, as applicable, will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or its applicable Lending Office or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower or Borrowers, as applicable, will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04 and delivered to the Borrower Representative shall be conclusive absent manifest error. The Borrower or Borrowers, as applicable, shall pay such Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delays in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower or Borrowers, as applicable, shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the applicable Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(i) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(ii) any failure by such Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower pursuant to this Agreement; or

(iii) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower Representative pursuant to Section 10.14;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Such Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by such Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Base Rate for such Loan by a matching deposit or, other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

Section 3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or if the applicable Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any event gives rise to the operation of Section 3.02, such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender,

such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if either Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 10.14.

Section 3.07 Survival. All of each Borrower's obligations under this Article III shall survive repayment of all other DIP Term Credit Obligations hereunder and resignation of the Administrative Agent.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

On the date of each Credit Event as provided in Section 5.01, each of Holdings and each Borrower represents and warrants to each of the Lenders that:

Section 4.01 Organization; Powers. Except as set forth on Schedule 4.01, each of Holdings, the U.S. Borrower and each of its Subsidiaries (a) is a partnership, limited liability company or corporation duly organized, validly existing and in good standing (or, if applicable in a foreign jurisdiction, enjoys the equivalent status under the laws of any jurisdiction of organization outside the United States) under the laws of the jurisdiction of its organization, (b) subject to the entry of the Orders and subject to the terms thereof, has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required, except where the failure so to qualify would not reasonably be expected to have a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of the Borrowers, to borrow and otherwise obtain credit hereunder.

Section 4.02 Authorization. The execution, delivery and performance by Holdings, each Borrower and each of the Subsidiary Loan Parties of each of the Loan Documents to which it is a party, and the borrowings hereunder and the transactions forming a part of the Transactions (a) have been duly authorized by all corporate, stockholder, partnership or limited liability company action required to be obtained by Holdings, each Borrower and each of the Subsidiary Loan Parties and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreements) or by laws of Holdings, either Borrower or any Subsidiary Loan Party, (B) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (C) any provision of any post-petition agreement to which Holdings, either Borrower or any Subsidiary Loan Party is a party or by which any of them or any of their property is or may be bound or (ii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by

Holdings, either Borrower or any Subsidiary Loan Party, other than the Liens created by the Loan Documents and Permitted Liens.

Section 4.03 Enforceability. Subject to the entry of the Orders and subject to the terms thereof, this Agreement has been duly executed and delivered by Holdings, each Borrower and each Subsidiary Loan Party and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 4.04 Governmental Approvals. Subject to the entry of the Orders and subject to the terms thereof, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for (a) the filing of Uniform Commercial Code financing statements and equivalent filings, registrations or other notifications in foreign jurisdictions, (b) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions, (c) recordation of the Mortgages, (d) such as have been made or obtained and are in full force and effect, (e) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect and (f) filings or other actions listed on Schedule 4.04.

Section 4.05 Financial Statements. (a) (i) On and as of the Closing Date, the Budget for the 13-week period from the week ending February 12, 2016 through and including the week ending April 29, 2016, copies of which have heretofore been furnished to Administrative Agent and the Lenders and (ii) following the Closing Date, the Budget delivered pursuant to Section 6.04(k), in each case are based on good faith estimates and assumptions made by the management of Holdings; provided that the Budget is not to be viewed as facts and that actual results during the period or periods covered by the Budget may differ from the Budget and that the differences may be material; provided, further, the Budget was based in good faith on assumptions believed by the management of Holdings to be reasonable at the time made and (1) in the case of the Budget in clause (a) above, on the Closing Date and (2) in the case of the Budget delivered pursuant to clause (ii) above, the date of delivery of the same (it being understood that assumptions as to future results are inherently subject to uncertainty and contingencies, many of which are beyond the Loan Parties' control).

(b) The audited combined balance sheets of Holdings and its consolidated Subsidiaries as at the end of the 2014 and 2013 fiscal years, and the related audited combined statements of income, stockholders' equity, and cash flows for such fiscal years, reported on by and accompanied by a report from Ernst & Young LLP, copies of which have heretofore been furnished to each Lender, present fairly in all material respects the combined financial position of Holdings and its consolidated Subsidiaries as at such date and the combined results of operations, stockholders' equity, and cash flows of Holdings and its consolidated Subsidiaries for the years then ended.

Section 4.06 No Material Adverse Effect. Since the Closing Date, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect (other than commencement of the Cases).

Section 4.07 Title to Properties; Possession Under Leases. (a) Each of Holdings, the U.S. Borrower and its Subsidiaries has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all its Real Properties (including all Mortgaged Properties) and has valid title to its personal property and assets, in each case, except for Permitted Liens and except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such title would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(b) Each of the U.S. Borrower and its Subsidiaries has complied with all obligations under all leases to which it is a party, except where the failure to comply would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and all such leases are in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.07(b), the U.S. Borrower and each of its Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) As of the Closing Date, none of the U.S. Borrower or its Subsidiaries has received any notice of any pending or contemplated condemnation proceeding affecting any material portion of the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation that remains unresolved as of the Closing Date.

Section 4.08 Subsidiaries. (a) Schedule 4.08(a) sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of each direct and indirect subsidiary of Holdings and, as to each such subsidiary, the percentage of each class of Equity Interests owned by Holdings or by any such subsidiary.

(b) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of the U.S. Borrower or any of its Subsidiaries, except as set forth on Schedule 4.08(b).

Section 4.09 Litigation; Compliance with Laws. (a) Except for the Cases, there are no unstayed actions, suits or proceedings at law or in equity or, to the knowledge of the Borrowers, investigations by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of Holdings or the Borrowers, threatened in writing against or affecting Holdings or the U.S. Borrower or any of its Subsidiaries or any business, property or rights of any such person which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) None of Holdings, the U.S. Borrower, its Subsidiaries and their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws, which are subject to Section 4.16) or any restriction of record or agreement affecting any Mortgaged Property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 4.10 Federal Reserve Regulations. (a) None of Holdings, the U.S. Borrower or its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose, or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

Section 4.11 Investment Company Act. None of Holdings, the U.S. Borrower or its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 4.12 Use of Proceeds. The Borrowers shall use the proceeds of the DIP ABL Facility and DIP Term Facility in accordance with the Budget and the Orders entered in connection with the Cases and the Borrowers shall use the proceeds of the DIP ABL Facility and DIP Term Facility during the pendency of the Cases exclusively for one or more of the following purposes (subject to any additional restrictions on the use of such proceeds and any such cash collateral set forth in the Interim Order): (a) in the case of the ABL DIP Facility, to pay (or in the case of contingent obligations, to cash collateralize) amounts owed by any Debtor at any time to any lender under any of the DIP ABL Loan Documents, including, without limitation, costs, fees and expenses at any time due thereunder, and, in the case of the DIP Term Facility, to pay amounts owed by any Debtor at any time to any Lender under any of the Loan Documents, including, without limitation, costs, fees and expenses at any time due thereunder; (b) to make disbursements specified or authorized to be paid in the Budget and in amounts not to exceed the Permitted Variances provided in the DIP ABL Loan Documents or the Loan Documents (all of which shall be deemed to be made to prevent immediate and irreparable harm to the Debtors); (c) to make adequate protection and other payments to the Prepetition ABL Agent, Prepetition ABL Lenders, Prepetition Term Agent or Prepetition Term Lenders to the extent authorized or required herein; (d) for any other purposes specified in the Budget, any “first day” order or the Interim Order; (e) to pay other fees or expenses that are required or authorized to be paid, prior to the Final Hearing, under any of the Loan Documents or DIP ABL Loan Documents or the Interim Order; and (f) to fund the Carve-Out (as defined in the Interim Order).

Section 4.13 Taxes. Except as set forth on Schedule 4.13:

(a) except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each of Holdings, the U.S. Borrower and its Subsidiaries has filed or caused to be filed all federal, state, local and non U.S. Tax returns required to have been filed by it and (ii) each such Tax return is true and correct;

(b) each of Holdings, each Borrower and each Borrower’s Subsidiaries has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a)(i) above and all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date (except Taxes or assessments that are being contested in good faith by appropriate proceedings in accordance with Section 6.03 and for which Holdings, the U.S. Borrower or any of its Subsidiaries (as the case may be) has set aside on its books adequate reserves in accordance with GAAP), which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and

(c) other than as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect as of the Closing Date, with respect to each of Holdings, the U.S. Borrower and its Subsidiaries, there are no claims being asserted in writing by any Governmental Authority with respect to any Taxes.

Section 4.14 No Material Misstatements. All written information (other than the Budget, estimates and information of a general economic nature or general industry nature) (the “Information”) concerning Holdings, the U.S. Borrower, its Subsidiaries, the Transactions and any other transactions contemplated hereby prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects, as of the date such Information was furnished to the Lenders and, if delivered prior to the Closing Date, as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made.

Section 4.15 Employee Benefit Plans. (a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) each ERISA Plan is in compliance in all material respects with the applicable provisions of ERISA and the Code; (ii) no Reportable Event has occurred during the past five years as to which the U.S. Borrower, Holdings, any of their Subsidiaries or any ERISA Affiliate was required to file a report with the PBGC, other than reports that have been filed; (iii) no ERISA Plan has any Unfunded Pension Liability in excess of \$500,000; (iv) no ERISA Event has occurred or is reasonably expected to occur; and (v) none of Holdings, the U.S. Borrower, its Subsidiaries and the ERISA Affiliates (A) has received any written notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA, or has knowledge that any Multiemployer Plan is reasonably expected to be in reorganization or to be terminated or (B) has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan.

(b) Each of Holdings, the U.S. Borrower and its Subsidiaries is in compliance (i) with all applicable provisions of law and all applicable regulations and published interpretations thereunder with respect to any employee pension benefit plan or other employee benefit plan governed by the laws of a jurisdiction other than the United States and (ii) with the terms of any such plan, except, in each case, for such noncompliance that would not reasonably be expected to have a Material Adverse Effect.

(c) Within the last five years, no ERISA Plan of Holdings, the U.S. Borrower, any Subsidiaries or the ERISA Affiliates has been terminated, whether or not in a “standard termination” as that term is used in Section 404(b)(1) of ERISA, that would reasonably be expected to result in liability to Holdings, the Borrowers, any Subsidiaries of the ERISA Affiliates in excess of \$500,000, nor has any ERISA Plan of Holdings, the U.S. Borrower, any Subsidiaries or the ERISA Affiliates (determined at any time within the past five years) with Unfunded Pension Liabilities been transferred outside of the “controlled group” (with the meaning of Section 4001(a)(14) of ERISA) of Holdings, the Borrowers, any Subsidiaries or the ERISA Affiliates that has or would reasonably be expected to result in a Material Adverse Effect.

Section 4.16 Environmental Matters. Except as set forth in Schedule 4.16 and except as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice, request for information, order, complaint or penalty has been received by the U.S. Borrower or any of its Subsidiaries, and there are no judicial, administrative or

other actions, suits or proceedings pending or, to the Borrowers' knowledge, threatened which allege a violation of or liability under any Environmental Laws, in each case relating to the U.S. Borrower or any of its Subsidiaries, (ii) each of U.S. Borrower and its Subsidiaries has all environmental permits, licenses and other approvals necessary for its operations to comply with all applicable Environmental Laws and is, and during the term of all applicable statutes of limitation, has been, in compliance with the terms of such permits, licenses and other approvals and with all other applicable Environmental Laws, (iii) to the Borrowers' knowledge, no Hazardous Material is located at, on or under any property currently owned, operated or leased by the U.S. Borrower or any of its Subsidiaries that would reasonably be expected to give rise to any cost, liability or obligation of the U.S. Borrower or any of its Subsidiaries under any Environmental Laws, and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the U.S. Borrower or any of its Subsidiaries and transported to or Released at any location in a manner that would reasonably be expected to give rise to any cost, liability or obligation of the U.S. Borrower or any of its Subsidiaries under any Environmental Laws and (iv) there are no agreements in which the U.S. Borrower or any of its Subsidiaries has expressly assumed or undertaken responsibility for any known or reasonably likely liability or obligation of any other person arising under or relating to Environmental Laws, which in any such case has not been made available to the Administrative Agent prior to the date hereof.

Section 4.17 Security Documents. (a) Subject to the entry of the Orders, the Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. To the extent not previously delivered to the Prepetition ABL Agent or the Prepetition Term Loan Agent, as applicable, in the case of the Pledged Collateral described in the Collateral Agreement, when certificates or promissory notes, as applicable, representing such Pledged Collateral are delivered to the Collateral Agent, and in the case of the other Collateral described in the Collateral Agreement (other than the Intellectual Property (as defined in the Collateral Agreement)), when financing statements and other filings specified in the Perfection Certificate are filed in the offices specified in the Perfection Certificate, subject to the entry of the Orders, the Collateral Agent (for the benefit of the Secured Parties) shall have a perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and, subject to Section 9-315 of the New York Uniform Commercial Code, the proceeds thereof, as security for the Finance Obligations to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, in each case with the priority set forth in the Orders.

(b) Subject to the entry of the Orders, when the Collateral Agreement or a summary thereof is properly filed in the United States Patent and Trademark Office and the United States Copyright Office, and, with respect to Collateral in which a security interest cannot be perfected by such filings, upon the proper filing of the financing statements referred to in paragraph (a) above, the Collateral Agent (for the benefit of the Secured Parties) shall have a perfected Lien on, and security interest in, all right, title and interest of the Loan Parties thereunder in all domestic Intellectual Property, in each case prior and superior in right to any other person (except Permitted Liens), to the extent permitted by the Intercreditor Agreement and as described in the Orders, it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the Loan Parties after the Closing Date.

(c) Subject to the entry of the Orders, the Collateral Agent (for the benefit of the Secured Parties) will have upon entry of the Interim Order, a valid Lien on all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder and the proceeds thereof, and subject to the entry of the Orders, the Collateral Agent (for the benefit of the Secured Parties) will have, upon entry of the Interim Order, a perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform

Commercial Code, the proceeds thereof, in each case prior and superior in right to any other person, subject to the Permitted Liens having priority under applicable Law, the Orders and/or the Intercreditor Agreement.

(d) Notwithstanding anything herein (including this Section 4.17) or in any other Loan Document to the contrary, neither either Borrower nor any other Loan Party makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary that is not a Loan Party, or as to the rights and remedies of the Administrative Agent, the Collateral Agent or any Lender with respect thereto, under foreign law.

Section 4.18 Location of Real Property and Leased Premises. (a) The Perfection Certificate correctly sets forth and identifies, in all material respects, as of the Closing Date all material Real Property owned by the Borrowers and the Subsidiary Loan Parties and the addresses thereof. As of the Closing Date, the Borrowers and the Subsidiary Loan Parties own in fee all the Real Property set forth as being owned by them on such schedules to the Perfection Certificate.

(b) The Perfection Certificate completely and correctly sets forth and identifies, in all material respects, as of the Closing Date, all material Real Property leased by the Borrowers and the Subsidiary Loan Parties and the addresses thereof and the leases pursuant to which the Real Property is leased.

Section 4.19 Cases. The Cases were commenced on the Petition Date in accordance with applicable Laws and proper notice thereof, and the hearing for the approval of the Interim Order has been given as identified in the certificate of service filed with the Bankruptcy Court.

Section 4.20 Labor Matters. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or threatened against Holdings, the U.S. Borrower or any of the its Subsidiaries; (b) the hours worked and payments made to employees of Holdings, the U.S. Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters; and (c) all payments due from Holdings, U.S. Borrower or any of its Subsidiaries or for which any claim may be made against Holdings, U.S. Borrower or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Holdings, such Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which Holdings, U.S. Borrower or any of its Subsidiaries (or any predecessor) is a party or by which Holdings, the U.S. Borrower or any of its Subsidiaries (or any predecessor) is bound.

Section 4.21 Insurance. Schedule 4.21 sets forth a true, complete and correct description, in all material respects, of all material insurance maintained by or on behalf of Holdings, the U.S. Borrower or its Subsidiaries as of the Closing Date. As of such date, such insurance is in full force and effect.

Section 4.22 No Default. Subject to the entry of the Orders and subject to the terms thereof, no Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

Section 4.23 Intellectual Property; Licenses, etc. Except as would not reasonably be expected to have a Material Adverse Effect and as set forth in Schedule 4.23, (a) the U.S. Borrower and each of its Subsidiaries owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights, mask works, domain names, and any and all applications or registrations for any of the foregoing (collectively, “Intellectual Property Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other person, (b) to the best knowledge of the Borrowers, neither the U.S. Borrower nor its Subsidiaries nor any Intellectual Property Right, proprietary right, product, process, method, substance, part, or other material now employed, sold or offered by or contemplated to be employed, sold or offered by the U.S. Borrower or its Subsidiaries infringes upon Intellectual Property Rights of any other person, and (c) no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrowers, threatened.

Section 4.24 Orders. The Interim Order and, after it has been entered, the Final Order, and the transactions contemplated by this Agreement and the other Loan Documents are in full force and effect, and have not, in whole or in part, been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged or subject to any pending or threatened challenge or proceeding in any jurisdiction, and each Borrower is in compliance with each Order.

Section 4.25 OFAC. No Loan Party (a) is a Sanctioned Person, (b) has any of its assets in Sanctioned Entities, or (c) derives any of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities, in each case, that would constitute a violation of applicable Laws. No proceeds of any Loan will be used and none have been used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, in each case, that would constitute a violation of applicable Laws.

ARTICLE V CONDITIONS OF LENDING

The obligations of the Lenders to make Loans (each, a “Credit Event”) are subject to the satisfaction or waiver (in accordance with Section 10.01 hereof) of the following conditions:

Section 5.01 All Credit Events. On the date of each Credit Event:

(a) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with the last paragraph of Section 2.03).

(b) The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects (except to the extent that such representations and warranties are qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) as of such date, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) At the time of and immediately after such Borrowing, no Event of Default or Default shall have occurred and be continuing or would result therefrom.

(d) (i) After the Interim Order Entry Date, the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Required Lenders and, to the extent affecting the rights or obligations of the Administrative Agent, the Administrative Agent or (ii) on and after the Final Order Entry Date, the Final Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Required Lenders and, to the extent affecting the rights or obligations of the Administrative Agent, the Administrative Agent.

(e) The making of the Loans shall not violate any requirement of Law and shall not be enjoined, temporarily, preliminarily or permanently.

Each such Credit Event shall be deemed to constitute a representation and warranty by the Borrowers on the date of such Borrowing, issuance, amendment, extension or renewal as applicable, as to the matters specified in paragraphs (b) through (e) of this Section 5.01.

Section 5.02 Initial Term Loan Credit Events. On the date of each Credit Event related to the Initial Term Loans:

(a) The Administrative Agent (or its counsel) shall have received from each party thereto either (i) a counterpart of this Agreement and each other Loan Document to be executed on or prior to the Closing Date, signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and such other applicable Loan Documents.

(b) The Administrative Agent shall have received in the case of each Loan Party each of the items referred to in clauses (i), (ii) and (iii) below:

(i) a copy of the certificate or articles of incorporation, certificate of limited partnership or certificate of formation, including all amendments thereto, of each Loan Party, (A) in the case of a corporation, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, and a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of each such Loan Party as of a recent date from such Secretary of State (or other similar official) or (B) in the case of a partnership or limited liability company, certified by the Secretary or Assistant Secretary of each such Loan Party;

(ii) a certificate of the Secretary or Assistant Secretary or similar officer of each Loan Party dated the Closing Date and certifying;

(A) that attached thereto is a true and complete copy of the by-laws (or partnership agreement, limited liability company agreement or other equivalent governing documents) of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below;

(B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of the U.S. Borrower, the borrowings hereunder, and that such resolutions have

not been modified, rescinded or amended and are in full force and effect on the Closing Date;

(C) that the certificate or articles of incorporation, certificate of limited partnership or certificate of formation of such Loan Party has not been amended since the date of the last amendment thereto disclosed pursuant to clause (i) above;

(D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party; and

(E) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party or, to the knowledge of such person, threatening the existence of such Loan Party; and

(iii) a certificate of a director or another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary or similar officer executing the certificate pursuant to clause (ii) above.

(c) The elements of the Collateral and Guarantee Requirement required to be satisfied on the Closing Date shall have been satisfied (other than in the case of any security interest in the intended Collateral or any deliverable related to the perfection of security interests in the intended Collateral, and the Administrative Agent shall have received a completed Perfection Certificate dated the Closing Date and signed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby, and the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties in the jurisdictions contemplated by the Perfection Certificate and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are Permitted Liens or have been released.

(d) The Lenders shall have received the financial information referred to in Section 4.05(a).

(e) On the Closing Date, after giving effect to the Transactions and the other transactions contemplated hereby, (x) Holdings shall have outstanding no Indebtedness and the U.S. Borrower and its Subsidiaries shall have outstanding no Indebtedness other than (i) the Loans and other extensions of credit under this Agreement, (ii) other Indebtedness permitted pursuant to Section 7.01.

(f) All fees and expenses due and payable on or prior to the Closing Date shall have been paid, including, to the extent invoiced, reimbursement or payment of all reasonable out of pocket expenses (including reasonable fees, charges and disbursements of Weil, Gotshal & Manges LLP and Kaye Scholer LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any Loan Document.

(g) The Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT Act to the extent requested not less than five Business Days prior to the Closing Date.

(h) There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality (other than the Cases) that could reasonably be expected to have a Material Adverse Effect.

(i) The DIP ABL Loan Agreement, in form and substance satisfactory to the Lenders, shall, subject to the entry of the Interim Order, become effective substantially concurrently with DIP Term Loan Facility.

(j) The Interim Order Entry Date shall have occurred prior to the Closing Date and not later than five days following the Petition Date, and the Interim Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to the Administrative Agent (with respect to its rights, privileges and immunities thereunder) and Required Lenders in their reasonable discretion and shall not be subject to a stay, and the Administrative Agent shall have received a signed copy of the Interim Order entered by the Bankruptcy Court.

(k) The Petition Date shall have occurred and each Loan Party shall be a debtor and debtor-in-possession in the Cases. The “first day orders” sought by the U.S. Borrower (including a cash management order) shall be satisfactory in form and substance to the Administrative Agent and the Required Lenders in their reasonable discretion.

(l) The Cases of any of the Debtors shall have not been dismissed or converted to a Chapter 7 case.

(m) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(n) All necessary governmental and third party consents and approvals necessary in connection with the DIP Term Loan Facility and the transactions contemplated hereby shall have been obtained.

For purposes of determining compliance with the conditions specified in this Article V, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender’s ratable portion of the initial Borrowing.

Section 5.03 Delayed Draw Term Loan Credit Events. On the date of each Credit Event related to the Delayed Draw Term Loans:

(a) The Final Order Entry Date shall have occurred concurrently with or prior thereto, and the Final Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to the Administrative Agent and the Required Lenders in their reasonable discretion and shall not be subject to a stay, and the Administrative Agent shall have received a signed copy of the Final Order entered by the Bankruptcy Court.

(b) All fees and expenses due and payable on or prior to the date of the Credit Event shall have been paid, including, in accordance with the Orders, to the extent invoiced, reimbursement or payment of all reasonable out of pocket expenses (including reasonable fees, charges and disbursements

of Weil, Gotshal & Manges LLP and Kaye Scholer LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any Loan Document.

(c) Since the Petition Date, no event, change, condition or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The Cases of any of the Debtors shall have not been dismissed or converted to a Chapter 7 case.

(e) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(f) The Lenders will receive (i) a waiver of any “equities of the case” claim under Section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of Section 506(c) of the Bankruptcy Code. In no event shall any of the Lenders be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

(g) The Administrative Agent shall have received all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT Act to the extent requested not less than five Business Days prior to the relevant Credit Event.

(h) Additionally, with respect to the Jamaica Funding Date only:

(i) The Administrative Agent shall have received, on behalf of itself and the Lenders on the first Jamaica Funding Date, a favorable written opinion of Myers Fletcher & Gordon, Jamaican counsel to the Jamaican Borrower, (A) dated the first Jamaica Funding Date, (B) addressed to the Administrative Agent and the Lenders and (C) in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders and covering such matters as the Administrative Agent shall reasonably request; and

(ii) The Administrative Agent shall have received the items specified in Sections 5.02(b) and (c) or their Jamaican law equivalent.

ARTICLE VI AFFIRMATIVE COVENANTS

Each Borrower covenants and agrees with each Lender and the Administrative Agent that unless and until all DIP Term Credit Obligations arising under the Loan Documents (other than contingent obligations for unasserted claims) shall have been repaid, unless the Required Lenders shall otherwise consent in writing, the U.S. Borrower will, and will cause each of its Subsidiaries to:

Section 6.01 Existence; Businesses and Properties. (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except, in the case of a Subsidiary of the U.S. Borrower, other than the Jamaican Borrower, where the failure to do so would not reasonably be expected to have a Material Adverse Effect, and except as otherwise expressly permitted under Section 7.05, and except for the liquidation or dissolution of Subsidiaries if the assets of such Subsidiaries, to the extent they exceed estimated liabilities, are acquired by the U.S. Borrower or a Wholly Owned Subsidiary of the U.S. Borrower in such liquidation or dissolution; provided, that

Subsidiary Loan Parties may not be liquidated into Subsidiaries that are not Loan Parties and Domestic Subsidiaries may not be liquidated into Foreign Subsidiaries.

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect thereto necessary to the normal conduct of its business and (ii) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times (in each case except as expressly permitted by this Agreement).

Section 6.02 Insurance. (a) Maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations and cause, subject to the time periods set forth in clause (ix) of the definition of “Collateral and Guarantee Requirement”, the Administrative Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies.

(b) With respect to any Mortgaged Properties, if at any time the area in which the Premises (as defined in the Mortgages) are located is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), maintain, subject to the time periods set forth in clause (vii) of the definition of “Collateral and Guarantee Requirement” to the extent commercially reasonably available, flood insurance in amounts no less than that maintained by the U.S. Borrower and the Subsidiaries as of the Closing Date or in such other total amount as the Administrative Agent may from time to time reasonably require, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time.

(c) In connection with the covenants set forth in this Section 6.02, it is understood and agreed that:

(i) none of the Administrative Agent, the Lenders nor their respective agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.02, it being understood that (A) the Loan Parties shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Administrative Agent, the Lenders or their agents or employees. If, however, the insurance policies, as a matter of the internal policy of such insurer, do not provide waiver of subrogation rights against such parties, as required above, then each of Holdings and the U.S. Borrower, on behalf of itself and behalf of each of its subsidiaries, hereby agrees, to the extent permitted by law, to waive, and further agrees to cause each of its Subsidiaries to waive, its right of recovery, if any, against the Administrative Agent, the Lenders and their agents and employees; and

(ii) the designation of any form, type or amount of insurance coverage by the Administrative Agent under this Section 6.02 shall in no event be deemed a representation, warranty or advice by the Administrative Agent or the Lenders that such insurance is adequate for

the purposes of the business of Holdings, the U.S. Borrower and its Subsidiaries or the protection of their properties.

Section 6.03 Taxes. Pay and discharge promptly when due all material Taxes imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims which, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such Tax or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings, and Holdings, the Borrowers or the affected Subsidiary, as applicable, shall have set aside on its books reserves in accordance with GAAP with respect thereto.

Section 6.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) within 95 days after the end of each fiscal year, a consolidated and consolidating by segment balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the U.S. Borrower and its Subsidiaries as of the close of such fiscal year and the consolidated and consolidating by segment results of its operations during such year and setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated and consolidating by segment balance sheet and related statements of operations, cash flows and owners' equity shall be audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants to the effect that such consolidated and consolidating by segment financial statements fairly present, in all material respects, the financial position and results of operations of the U.S. Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (it being understood that the delivery by the Borrower Representative of annual reports on Form 10-K of the U.S. Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 6.04(a) to the extent such annual reports include the information specified herein); provided that consolidating by segment financial statements for the fiscal year ending December 31, 2015 shall not be required to be delivered until the date that is 60 days after the Petition Date;

(b) within 50 days after the end of each of the first three fiscal quarters of each fiscal year beginning with the fiscal quarter ending March 31, 2016, (i) a consolidated and consolidating by segment balance sheet and related statements of operations and cash flows showing the financial position of the U.S. Borrower and its Subsidiaries as of the close of such fiscal quarter and the consolidated and consolidating by segment results of its operations during such fiscal quarter and the then elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, and (ii) management's discussion and analysis of significant operational and financial developments during such quarterly period, all of which shall be in reasonable detail and which consolidated and consolidating by segment balance sheet and related statements of operations and cash flows shall be certified by a Financial Officer of the Borrower Representative on behalf of each Borrower as fairly presenting, in all material respects, the financial position and results of operations of the U.S. Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) (it being understood that the delivery by the U.S. Borrower of quarterly reports on Form 10 Q of the U.S. Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 6.04(b) to the extent such quarterly reports include the information specified herein);

(c) (x) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of a Financial Officer of the Borrower Representative certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the

nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (y) concurrently with any delivery of financial statements under paragraph (a) above, if the accounting firm is not restricted from providing such a certificate by the policies of its national office, a certificate of the accounting firm opining on or certifying such statements stating whether they obtained knowledge during the course of their examination of such statements of any Default or Event of Default (which certificate may be limited to accounting matters and disclaim responsibility for legal interpretations);

(d) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials filed by Holdings, the U.S. Borrower or any of its Subsidiaries with the SEC, or distributed to its stockholders generally, as applicable; provided, however, that such reports, proxy statements, filings and other materials required to be delivered pursuant to this clause (d) shall be deemed delivered for purposes of this Agreement when posted to the website of Holdings or the Borrower Representative;

(e) within 35 days after the end of each calendar month of each fiscal year beginning with the calendar month ending January 31, 2016, (i) a consolidated and consolidating by segment balance sheet and related statements of operations and cash flows showing the financial position of the U.S. Borrower and its Subsidiaries as of the close of such calendar month and the consolidated and consolidating by segment results of its operations during such calendar month and the then elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, and (ii) management's discussion and analysis of significant operational and financial developments during such monthly period, all of which shall be in reasonable detail and which consolidated and consolidating by segment balance sheet and related statements of operations and cash flows shall be certified by a Financial Officer of the Borrower Representative on behalf of each Borrower as fairly presenting, in all material respects, the financial position and results of operations of the U.S. Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes); provided that consolidating by segment financial statements for the calendar months ending January 31, 2016 and February 29, 2016 shall not be required to be delivered until the date that is 60 days after the Petition Date;

(f) promptly, from time to time, all proceedings, motions and other documents filed with the Bankruptcy Court on behalf of the Debtors in the Cases and shall include counsel for the Administrative Agent and counsel for each Lender on any "Special Notice List" or other similar list of parties to be served with papers in the Cases;

(g) (i) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the U.S. Borrower or any of its Subsidiaries, or compliance with the terms of any Loan Document, or such consolidating financial statements as in each case the Administrative Agent may reasonably request (for itself or on behalf of any Lender) and (ii) prior written notice in the event that such Borrower changes its fiscal year end;

(h) in the event that (i) Holdings is not engaged in any business or activity, and does not own any assets or have other liabilities, other than those incidental to its ownership directly or indirectly of the capital stock of a Borrower and the incurrence of Indebtedness for borrowed money (and, without limitation on the foregoing, does not have any subsidiaries other than the U.S. Borrower and its Subsidiaries and any direct or indirect parent companies of such Borrower that are not engaged in any other business or activity and do not hold any other assets or have any liabilities except as indicated above) or (ii) in connection with any reporting requirements described in paragraphs (a) and (b) of this Section 6.04 the Borrower Representative delivers consolidating financial information that explains, at a

level of detail reasonably acceptable to the Administrative Agent, the differences between the information relating to Holdings and its Subsidiaries other than the U.S. Borrower and its Subsidiaries, on the one hand, and the information relating to the U.S. Borrower and its Subsidiaries on a standalone basis, on the other hand, then such consolidated reporting at Holdings' level in a manner consistent with that described in paragraphs (a) and (b) of this Section 6.04 for such Borrower will satisfy the requirements of such paragraphs;

(i) promptly upon request by the Administrative Agent, copies of: (i) each Schedule B (Actuarial Information) to the most recent annual report (Form 5500 Series) filed with the Internal Revenue Service with respect to an ERISA Plan; (ii) the most recent actuarial valuation report for any ERISA Plan; (iii) all notices received from a Multiemployer Plan sponsor, a plan administrator or any governmental agency, or provided to any Multiemployer Plan by Holdings, the U.S. Borrower, a Subsidiary or any ERISA Affiliate, concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any ERISA Plan or Multiemployer Plan as the Administrative Agent shall reasonably request;

(j) promptly upon Holdings, the U.S. Borrower or Subsidiaries becoming aware of any fact or condition which would reasonably be expected to result in an ERISA Event, the Borrower Representative shall deliver to Administrative Agent a summary of such facts and circumstances and any action it or Holdings or Subsidiaries intend to take regarding such facts or conditions;

(k) no later than 5:00 p.m. Central Time (x) on the date that is four Business Days before the end of each calendar month, an updated Budget (with the first such delivery thereof on February 24, 2016) and Monthly Budget (with the first such delivery thereof on the date that is 60 days after the Petition Date) and (y) on Wednesday of each calendar week, an updated Variance Report (with the first such delivery thereof on February 17, 2016);

(l) use commercially reasonable efforts to deliver to the Lenders an environmental report with respect to Holdings and its Subsidiaries in form and substance reasonably acceptable to the Required Lenders;

(m) (i) as soon as practicable in advance of filing with the Bankruptcy Court or delivering to the Committee appointed in a Case, if any, or to the U.S. Trustee, as the case may be, the Final Order, all other proposed orders and pleadings related to the Cases, the DIP Term Loan Facility and/or any sale contemplated in accordance with Section 6.12 hereof (all of which must be in form and substance satisfactory to the Administrative Agent and the Required Lenders), any Reorganization Plan and/or any disclosure statement related thereto and (ii) substantially simultaneously with the filing with the Bankruptcy Court or delivering to the Committee appointed in any Case, if any, or to the U.S. Trustee for the Eastern District of Missouri, as the case may be, all other notices, filings, motions, pleadings or other information concerning the financial condition of the U.S. Borrower or its Subsidiaries or the Cases that may be filed with the Bankruptcy Court or delivered to the Committee appointed in any Case, if any, or to the U.S. Trustee;

(n) to the extent that the Required Lenders (in their sole discretion) require an audit in connection with the consummation of any Reorganization Plan or sale of any assets, within a time frame to be agreed, a consolidated and consolidating by segment balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the U.S. Borrower and its Subsidiaries and the consolidated and consolidating by segment results of its operations and setting forth in comparative form the corresponding figures for the prior period, which consolidated and consolidating by segment balance sheet and related statements of operations, cash flows and owners' equity shall be audited by independent public accountants of recognized national standing and accompanied by an

opinion of such accountants to the effect that such consolidated and consolidating by segment financial statements fairly present, in all material respects, the financial position and results of operations of the U.S. Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP; and

(o) promptly upon delivery of the reports specified in clauses (a) – (n) above and the notices specified in Section 6.05, deliver such reports and notices to the Prepetition Term Agent for distribution to the Prepetition Term Lenders by posting the materials on Intralinks or another electronic system in accordance with the procedures set forth in the Prepetition Term Loan Agreement.

Section 6.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of Holdings or either Borrower obtains actual knowledge thereof:

(i) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(ii) any other development specific to Holdings, the U.S. Borrower or any of its Subsidiaries that has had, or would reasonably be expected to have, a Material Adverse Effect; and

(iii) the development of any ERISA Event that, together with all other ERISA Events that have developed or occurred, would reasonably be expected to have a Material Adverse Effect.

Section 6.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; provided, that this Section 6.06 shall not apply to Environmental Laws, which are the subject of Section 6.09, or to laws related to Taxes, which are the subject of Section 6.03.

Section 6.07 Maintaining Records; Access to Properties and Inspections. Maintain all financial records in accordance with GAAP and permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender to visit and inspect the financial records and the properties of Holdings, the U.S. Borrower or any of its Subsidiaries at reasonable times, upon reasonable prior notice to Holdings or the Borrower Representative, and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender upon reasonable prior notice to Holdings or the Borrower Representative to discuss the affairs, finances and condition of Holdings, the U.S. Borrower or any of its Subsidiaries with the officers thereof and independent accountants therefor (subject to reasonable requirements of confidentiality, including requirements imposed by law or by contract).

Section 6.08 Use of Proceeds. Use the proceeds of the Loans as set out in Section 4.12.

Section 6.09 Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other persons occupying its properties to comply, with all Environmental Laws applicable to its operations and properties; and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case with respect to this Section 6.09, to the extent

the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.10 Further Assurances; Additional Security. (a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents and recordings of Liens in stock registries), that may be required under any applicable law, or that the Collateral Agent may reasonably request, to satisfy the Collateral and Guarantee Requirement and to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties and provide to the Collateral Agent, from time to time upon reasonable request, evidence reasonably satisfactory to the Collateral Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents and by the Orders.

(b) If any asset (including any Real Property (other than Real Property covered by paragraph (c) below) or improvements thereto or any interest therein) that has an individual fair market value (as determined in good faith by the Borrower Representative) in an amount greater than \$500,000 is acquired by either Borrower or any other Loan Party after the Closing Date or owned by an entity at the time it becomes a Subsidiary Loan Party (in each case other than (x) assets constituting Collateral under a Security Document that become subject to the Lien of such Security Document upon acquisition thereof and (y) assets that are not required to become subject to Liens in favor of the Collateral Agent pursuant to Section 6.10(g) or the Security Documents) (i) notify the Collateral Agent thereof, and (ii) cause such asset to be subjected to a Lien securing the DIP Term Credit Obligations (subject, as the case may be, to the Intercreditor Agreement and Permitted Liens) and take, and cause the Subsidiary Loan Parties to take, such actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect such Liens, (subject, as the case may be, to the Intercreditor Agreement and Permitted Liens), including actions described in paragraph (a) of this Section 6.10, all at the expense of the Loan Parties, subject to paragraph (g) below.

(c) Promptly notify the Collateral Agent of the acquisition of, and grant and cause each of the Subsidiary Loan Parties to grant to the Collateral Agent security interests and mortgages in, such Real Property of such Borrower or any such Subsidiary Loan Parties as are not covered by the original Mortgages, to the extent acquired after the Closing Date and having a value at the time of acquisition in excess of \$500,000, and, to the extent requested by the Collateral Agent, pursuant to documentation substantially in the form of the Mortgages delivered to the Collateral Agent on the Closing Date or in such other form as is reasonably satisfactory to the Collateral Agent (each, an “Additional Mortgage”) and constituting valid and enforceable Liens subject to no other Liens except Permitted Liens, at the time of perfection thereof, record or file, and cause each such Subsidiary to record or file, the Additional Mortgage or instruments related thereto in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Mortgages and pay, and cause each such Subsidiary to pay, in full, all Taxes, fees and other charges payable in connection therewith, in each case subject to paragraph (g) below. Unless otherwise waived by the Collateral Agent, with respect to each such Additional Mortgage, the Borrower Representative shall deliver to the Collateral Agent (i) if such Real Property is an improved Real Property, prior to the execution and delivery of such Additional Mortgage, (x)(1) address and other identifying information with respect to such Real Property reasonably satisfactory to the Collateral Agent and (2) if any improvements on such Mortgaged Property are located within any area designated by the Director of the Federal Emergency Management Agency as a “special flood hazard” area (as may be established by a completed Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such Mortgaged Property), evidence of a flood insurance policy (if such insurance is required by applicable Law and commercially reasonably available) from a company and in an amount satisfactory to the Collateral Agent for the applicable portion of the premises, naming the

Collateral Agent, for the benefit of the Lenders, as mortgagee or (y) a certification from a registered engineer or land surveyor in a form reasonably satisfactory to the Collateral Agent or other evidence reasonably satisfactory to the Collateral Agent that none of the improvements on such Mortgaged Property is located within any area designated by the Director of the Federal Emergency Management Agency as a "special flood hazard" area and (ii) contemporaneously therewith a title insurance policy and a copy of any survey obtained by the Borrower Representative with respect to each Real Property subject to an Additional Mortgage.

(d) If any additional direct or indirect Subsidiary of either Borrower is formed or acquired after the Closing Date, and if such Subsidiary is a Subsidiary Loan Party, within ten Business Days after the date such Subsidiary is formed or acquired, notify the Collateral Agent and the Lenders thereof and, within 20 Business Days after the date such Subsidiary is formed or acquired or such longer period as the Collateral Agent shall agree, cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary and with respect to any Equity Interest in or Indebtedness of such Subsidiary owned by or on behalf of any Loan Party, subject to paragraph (g) below.

(e) If any additional Foreign Subsidiary of either Borrower is formed or acquired after the Closing Date, and if such Subsidiary is a "first tier" Foreign Subsidiary, within five Business Days after the date such Foreign Subsidiary is formed or acquired, notify the Collateral Agent and the Lenders thereof and, within 20 Business Days after the date such Foreign Subsidiary is formed or acquired or such longer period as the Collateral Agent shall agree, cause the Collateral and Guarantee Requirement to be satisfied with respect to any Equity Interest in such Foreign Subsidiary owned by or on behalf of any Loan Party, subject to paragraph (g) below.

(f) (i) Furnish to the Collateral Agent prompt written notice of any change (A) in any Loan Party's corporate or organization name, (B) in any Loan Party's identity or organizational structure or (C) in any Loan Party's organizational identification number; provided, that such Borrower shall not effect or permit any such change unless all filings have been made, or will have been made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral for the benefit of the Secured Parties and (ii) promptly notify the Collateral Agent if any material portion of the Collateral is damaged or destroyed.

(g) The Collateral and Guarantee Requirement and the other provisions of this Section 6.10 need not be satisfied with respect to (i) and Real Property held by the U.S. Borrower or any of its Subsidiaries as a lessee under a lease or any Real Property owned in fee that has an absolute fair market value (as determined in good faith by such Borrower) in an amount less than \$500,000, (ii) any vehicle, (iii) Exempt Deposit Accounts and securities accounts, (iv) any Equity Interests issued or acquired after the Closing Date (other than Equity Interests in such Borrower or, in the case of any person with is a Subsidiary, Equity Interests in such person issued or acquired after such person became a Subsidiary) in accordance with this Agreement if, and to the extent that, and for so long as (A) such Equity Interests constitute less than 100% of all applicable Equity Interests of such person and the person holding the remainder of such Equity Interests are not Affiliates, (B) doing so would violate applicable law or a contractual obligation binding on or with respect to such Equity Interests or such Subsidiary and (C) with respect to such contractual obligations, such obligation existed at the time of the acquisition thereof and was not created or made binding on or with respect to such Equity Interests or each Subsidiary in contemplation of or in connection with the acquisition of such Equity Interests or Subsidiary, (v) any assets acquired after the Closing Date, to the extent that, and for so long as, taking such actions would violate an enforceable contractual obligation binding on such assets in contemplation or in connection with the acquisition of such assets (except in the case of assets acquired with Indebtedness permitted pursuant to section 7.01(i) that is secured by a Permitted Lien) or (vi) those assets

as to which the Collateral Agent, after consulting with the Lenders, shall reasonably determine that the costs of obtaining or perfecting such a security interest are excessive in relation to the value of the security to be afforded thereby; provided, that, upon the reasonable request of the Collateral Agent, acting at the direction of the required Lenders, such Borrower shall, and shall cause any applicable Subsidiary to, use commercially reasonable efforts to have waived or eliminated any contractual obligation of the types described in clauses (iv) and (v) above.

(h) [Reserved].

(i) Prior to any Loan Party establishing and funding a Deposit Account following the Closing Date, the Borrower Representative shall notify the Collateral Agent thereof and execute and deliver to the Collateral Agent a Deposit Account Control Agreement with respect to each such Deposit Account, other than any Exempt Deposit Account.

(j) Following the Closing Date (and subject to the time period provided for in Section 6.10(h)), the Loan Parties shall maintain effective Deposit Account Control Agreements with respect to each Deposit Account, other than Exempt Deposit Accounts, of the Loan Parties, at all times unless and until the Security Interest (as defined in the Collateral Agreement) with respect to such Deposit Account is released in accordance with this Agreement.

(k) Upon the indefeasible repayment in full in cash of (i) the obligations in respect of the Prepetition ABL Credit Agreement and the DIP ABL Loan Agreement and (ii) the obligations in respect of the Prepetition Term Loan Agreement, and at all times thereafter, the applicable Loan Parties shall take any actions as may be required under applicable Law, or which the Administrative Agent may reasonably request, to transfer all Collateral in the possession of the Prepetition ABL Agent, the DIP ABL Agent or the Prepetition Term Agent to the Administrative Agent and to execute and deliver to the Administrative Agent all such documents or items necessary to grant in favor of the Administrative Agent for the benefit of the Lenders, perfect, or continue the perfection or validity of, a first priority perfected Lien (subject to Permitted Liens) on the Collateral, all at the expense of the Loan Parties.

Section 6.11 Debtor-in-Possession Obligations. Comply in a timely manner with its obligations and responsibilities as a debtor-in-possession under the U.S. Bankruptcy Code, the Bankruptcy Rules, the rules of procedure of the Bankruptcy Court, and any order of the Bankruptcy Court.

Section 6.12 Milestones.

(a) Achieve each of the following milestones (as the same may be extended from time to time with the consent of the Administrative Agent (acting at the direction of the Required Lenders), the "Downstream Milestones").

(i) On the Petition Date, the Debtors shall file (i) a motion seeking approval of (A) the DIP Term Loan Facility and (B) the DIP ABL Facility and (ii) a motion seeking a final order, in form and substance acceptable to the Required Lenders in all respects, authorizing the Jamaican Borrower to reject the Sherwin Contract pursuant to section 365 of the Bankruptcy Code.

(ii) On or before the date that is five days after the Petition Date, the Interim Order shall have been entered by the Bankruptcy Court.

(iii) On or before the date that is 15 Business Days after the Petition Date, the Debtors shall file a motion seeking approval of the Downstream Sale Process (such motion, the “Downstream Sale Motion” and such auction, to the extent necessary, the “Downstream Auction”).

(iv) On or before the date that is 35 days after the Petition Date, the Final Order authorizing and approving the DIP Term Loan Facility and the DIP ABL Facility and the transactions contemplated thereby, in form and substance satisfactory to the Administrative Agent and the Required Lenders, and shall have been entered by the Bankruptcy Court.

(v) On or before the date that is 45 days after the Petition Date, a final order, in form and substance acceptable to the Required Lenders in all respects, approving the Downstream Sale Process shall have been entered by the Bankruptcy Court, which order shall permit the Prepetition Term Lenders to credit bid all or any portion of the amounts outstanding under the Prepetition Term Loan Agreement and/or the DIP Term Loan Facility and shall contain expense reimbursements acceptable to the Required Lenders in their reasonable discretion.

(vi) On or before the date that is 45 Business Days after the Petition Date, the Debtors’ aluminum smelter located in New Madrid, Missouri shall have been idled.

(vii) On or before the date that is 60 days after the Petition Date, either (i) a final order, in form and substance acceptable to the Required Lenders in all respects, shall have been entered by the Bankruptcy Court authorizing the Jamaican Borrower to reject the Sherwin Contract pursuant to section 365 of the Bankruptcy Code or (ii) a final order, in form and substance acceptable to the Required Lenders in all respects, shall have been entered by the Bankruptcy Court pursuant to rule 9019 of the Bankruptcy Rules approving the Sherwin Settlement and the Sherwin Settlement shall have become effective.

(viii) On or before the date that is 60 days after the Petition Date, the Acceptable Business Plan shall have been provided to the Lenders.

(ix) On or before the date that is 95 days after the Petition Date, a final order, in form and substance acceptable to the Required Lenders in all respects (i) approving the sale of the Debtors’ assets and property that comprise the Downstream Business (the “Downstream Asset Sale”) and (ii) providing that the liens and claims of the Lenders, Prepetition ABL Lenders and the Prepetition Term Lenders shall attach to the proceeds of the Downstream Asset Sale in accordance with the provisions of the Final Order and Intercreditor Agreement;

(x) On or before the date that is 120 days after the Petition Date, closing of the sale of the Downstream Business;

(xi) On or before the date that is 90 days after the Petition Date, the Debtors shall have filed the Reorganization Plan and related disclosure statement each in a form acceptable to the Required Lenders (the “Plan Filing Date”); and

(b) in the event that the Plan Filing Date occurs in accordance with clause (a)(xi), the Debtors shall comply with the following Milestones (collectively with clause (a)(v), the “Plan Milestones”):

(i) On or before the date that is 35 days after the Plan Filing Date, the Bankruptcy Court shall have entered an order approving the disclosure statement and plan solicitation procedures each in a form acceptable to the Required Lenders;

(ii) On or before the date that is 90 days after the Plan Filing Date, the Bankruptcy Court shall have entered an order acceptable to the Required Lenders confirming the Reorganization Plan (the “Confirmation Order”);

(iii) On the date that is the earlier of (A) 30 days after the entry of the Confirmation Order and (B) 210 days after the Petition Date, the Reorganization Plan shall become effective.

(c) In the event that (i) the Plan Filing Date does not occur in accordance with clause (a)(xi) above the Debtors shall, within 135 days of the Petition Date, file a motion seeking approval for the Upstream Sales Process which shall be reasonably acceptable to the Required Lenders (such motion, the “Upstream Sale Motion” and such auction, to the extent necessary, the “Upstream Auction”) or (ii) the Debtors do not comply with any of the Plan Milestones, the Debtors shall, within five Business Days of such non-compliance file the Upstream Sale Motion. The Upstream Sale Motion shall contain milestones (the “Upstream Milestones”) for the Upstream Sale Process that are designed to ensure consummation of the sale prior to the scheduled Maturity Date and are acceptable to the Required Lenders in their reasonable discretion. The sale order that is entered by the Bankruptcy Court approving the Upstream Sale Motion shall be acceptable to the Required Lenders in their reasonable discretion and shall provide that the liens and claims of the Lenders, the Prepetition ABL Lenders, and the Prepetition Term Lenders shall attach to the proceeds of the Upstream Asset Sale in accordance with the provisions set forth in the Final Order and Intercreditor Agreement. For the avoidance of doubt, notwithstanding the filing of the Upstream Sale Motion, the Debtors shall not be precluded from filing and consummating a Chapter 11 plan acceptable to the Required Lenders prior to entry of a final sale order.

Section 6.13 Cash Management. On or before the date that is 10 Business Days after the Closing Date, establish and maintain a Deposit Account with a depository bank reasonably acceptable to the Administrative Agent, subject to a Deposit Account Control Agreement in form and substance acceptable to the Administrative Agent, for the receipt and collection of Net Proceeds, including with respect to the Net Proceeds that constitute Term Priority Collateral received by a Loan Party from any Person in respect of (i) any insurance proceeds related to (x) the January 7, 2016 rectifier station auxiliary power feed failure and (y) the explosion at the cashouse on August 4, 2015 at the U.S. Borrower’s New Madrid, Missouri location (the “August New Madrid Event”), (ii) the one-time land sales in New Madrid, Missouri and (iii) the one-time clay sales in Gramercy, Louisiana of approximately \$2,000,000 (the “Additional Collateral Account”). The U.S. Borrower shall not use any Net Proceeds unless consented to by the Required Lenders in their sole discretion, with the exception of \$3,900,000 of proceeds from the August New Madrid Event, which has been included in the Budget. Upon the occurrence and during the continuance of an Event of Default, the Required Lenders may, in their sole and absolute discretion, immediately instruct the Borrower Representative to use the Net Proceeds in the Additional Collateral Account that is DIP Term Loan Priority Collateral to repay the DIP Term Credit Obligations or the obligations under the Prepetition Term Loan Agreement. The Loan Parties shall hold such amounts in trust for the Administrative Agent and Lenders and such amounts shall not be commingled with any of such Loan Party’s other funds or deposited in any other account of such Loan Party. The Loan Parties acknowledge and agree that the funds on deposit in the Additional Collateral Account shall at all times be collateral security for the DIP Term Credit Obligations.

Section 6.14 First Day Orders. Cause all proposed “first day orders” submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement in all respects.

Section 6.15 Budget Compliance and Variances. The Loan Parties will use the proceeds of the Loans solely to make disbursements for expenditures provided for in accordance with Section 4.12 and this Section 6.15. The U.S. Borrower shall maintain at least \$5,000,000 cash on hand at all times. Holdings and the U.S. Borrower will not permit the:

(a) actual Operating Disbursements, Payroll Disbursements, CAPEX Disbursements and Other Disbursements (each as referenced in the Budget) of the Loan Parties to be more than the rolling one-week cumulative budgeted Operating Disbursements, Payroll Disbursements, CAPEX Disbursements and Other Disbursements, as set forth in the Budget on a segment by segment basis for such period by more than 15% for each rolling one-week cumulative period beginning with the first full one-week period ending February 12, 2016. For the avoidance of doubt, the rolling one-week cumulative periods shall be tested as follows: for the first weekly testing period, week 1 shall be tested; for the second weekly testing period, weeks 1-2 shall be tested in aggregate; for the third weekly testing period, weeks 1-3 shall be tested in aggregate; for the fourth weekly testing period, weeks 1-4 shall be tested in aggregate;

(b) actual Net Sales (as referenced in the Budget) of the Loan Parties to be less than the rolling two-week cumulative budgeted Net Sales, as set forth in the Budget for the Alumina and Flat Rolled segments, for such period by more than 20%, tested each week, for the rolling two-week cumulative period. The first Net Sales test shall be conducted March 2, 2016, and shall cover Net Sales between February 1, 2016 to February 26, 2016. Weekly testing shall begin March 9, 2016 and shall be conducted each weekly period thereafter; or

(c) actual Operating Cash Flow and Net Cash Flow (each as referenced in the Budget) of the Loan Parties to be less than the rolling one-week cumulative budgeted Operating Cash Flow and Net Cash Flow, as set forth in the Budget on a segment by segment basis for such period by more than 20% for each rolling one-week cumulative period beginning with the first full one-week period ending February 12, 2016 (clauses (a), (b) and (c) collectively, the “Permitted Variances”). For the avoidance of doubt, the rolling one-week cumulative periods shall be tested as follows: for the first weekly testing period, week 1 shall be tested; for the second weekly testing period, weeks 1-2 shall be tested in aggregate; for the third weekly testing period, weeks 1-3 shall be tested in aggregate; for the fourth weekly testing period, weeks 1-4 shall be tested in aggregate.

Section 6.16 Adequate Protection Payments. Loan Parties will make adequate protection payments payable in cash on the dates and to the extent required by the Orders (such interest and payments, collectively, the “Adequate Protection Payments”).

Section 6.17 Post-Closing Obligations. On or prior to the date specified in Schedule 6.17, the Borrowers shall cause the Obligations listed therein to be satisfied.

Section 6.18 Consultants. Provide the Administrative Agent and the Lenders with reasonable access to any consultant, turnaround management, broker or financial advisory firm retained by the U.S. Borrower or its Subsidiaries in any of the Cases and, if requested, copies of all retention agreements for each such consultant.

Section 6.19 DIP ABL Facility. Keep and maintain the DIP ABL Facility in full force and effect and use the proceeds of advances thereunder solely for purposes and in amounts (subject to Permitted Variances) set forth in the Budget or permitted by the DIP ABL Loan Agreement or the Orders.

Section 6.20 Additional Collateral Covenant. Notwithstanding anything to the contrary, the Borrower Representative shall execute and deliver to Administrative Agent, for the benefit of Secured Parties, Mortgages, deposit accounts control agreements, lien waivers and other Security Documents to the extent provided to the DIP ABL Agent or executed in respect of any loans under the DIP ABL Facility.

ARTICLE VII NEGATIVE COVENANTS

The Borrowers covenants and agrees with each Lender that unless and until all DIP Term Credit Obligations arising under the Loan Documents (other than contingent obligations for unasserted claims) shall have been paid, unless the Required Lenders shall otherwise consent in writing, the Borrowers will not, and will not permit any of the Subsidiaries to:

Section 7.01 Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness existing on the Closing Date and set forth on Schedule 7.01;
- (b) Indebtedness (i) created hereunder and under the other Loan Documents and (ii) Indebtedness under the Prepetition ABL Credit Agreement, the Prepetition Term Loan Agreement and the DIP ABL Loan Agreement;
- (c) obligations (contingent or otherwise) arising under a Swap Contract approved by the Bankruptcy Court if such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates, commodity prices or foreign exchange rates (or to allow any customer to do so);
- (d) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance to the U.S. Borrower or any Subsidiary, pursuant to reimbursement or indemnification obligations to such person, in each case in the ordinary course of business; provided, that upon the incurrence of Indebtedness with respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed not later than 30 days following such incurrence;
- (e) Indebtedness of the U.S. Borrower to Holdings or any Subsidiary and of any Subsidiary to Holdings, the U.S. Borrower or any other Subsidiary; provided, that (i) the Indebtedness shall be subject to Section 7.04(b) and (ii) Indebtedness of the U.S. Borrower to Holdings or any Subsidiary and Indebtedness of any other Loan Party to Holdings or any Subsidiary that is not a Subsidiary Loan Party shall be subordinated to the DIP Term Credit Obligations on terms reasonably satisfactory to the Administrative Agent and the Required Lenders;
- (f) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;
- (g) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business; provided, that (x) such Indebtedness

(other than credit or purchase cards) is extinguished within ten Business Days of notification to the Borrower Representative of its incurrence and (y) such Indebtedness in respect of credit or purchase cards is extinguished within 60 days from its incurrence;

(h) [Reserved];

(i) Capital Lease Obligations, mortgage financings and purchase money Indebtedness of the U.S. Borrower or any Subsidiary prior to or within 90 days after being incurred to finance any acquisition, lease, construction, repair, replacement or improvement of the respective property (real or personal, and whether through the direct purchase of property or the Equity Interests of any person owning such property) permitted under this Agreement in order to finance such acquisition, lease, construction, repair, replacement or improvement;

(j) Professional Fees, fees payable to the U.S. Trustee, and fees payable to the Clerk of the Bankruptcy Court;

(k) [Reserved];

(l) Indebtedness of the U.S. Borrower pursuant to the Senior Notes in an aggregate principal amount that is not in excess of \$350,000,000;

(m) Guarantees (i) by the Subsidiary Loan Parties of the Indebtedness of the U.S. Borrower described in clause (l) of this Section 7.01, (ii) by the U.S. Borrower or any Subsidiary Loan Party of any Indebtedness of the U.S. Borrower or any Subsidiary Loan Party permitted to be incurred under this Agreement, (iii) by the U.S. Borrower or any Subsidiary Loan Party of Indebtedness otherwise permitted hereunder of Holdings or any Subsidiary that is not a Subsidiary Loan Party to the extent such Guarantees are permitted by Section 7.04 and (iv) by any Subsidiary that is not a Loan Party of Indebtedness of another Subsidiary that is not a Loan Party and; provided, that Guarantees by the U.S. Borrower or any Subsidiary Loan Party under this Section 7.01(m) of any other Indebtedness of a person that is subordinated to other Indebtedness of such person shall be expressly subordinated to the DIP Term Credit Obligations;

(n) [Reserved];

(o) Indebtedness in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade letters of credit (other than obligations in respect of other Indebtedness) in the ordinary course of business;

(p) Indebtedness supported by a Letter of Credit (as defined in the ABL Credit Agreement) in principal amount not in excess of the stated amount of such Letter of Credit;

(q) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(r) [Reserved];

(s) [Reserved];

(t) unsecured Indebtedness in respect of obligations of the U.S. Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided, that such obligations are incurred in connection with open

accounts extended by suppliers on customary trade terms (which require that all such payments be made within 90 days after the incurrence of the related obligations) in the ordinary course of business and not in connection with the borrowing of money or any Swap Contracts;

(u) Indebtedness representing deferred compensation to employees and directors of the U.S. Borrower or any Subsidiary incurred in the ordinary course of business;

(v) [Reserved];

(w) [Reserved];

(x) [Reserved];

(y) [Reserved];

(z) Indebtedness consisting of obligations of the U.S. Borrower or any Subsidiary under deferred compensation or other similar arrangements incurred by such Person in connection with the Transactions or any other Investment permitted hereunder;

(aa) all premiums (if any), interest (including post petition interest), fees, expenses, charges and additional or contingent interest on obligations described in paragraphs (a) through (z) above.

Section 7.02 Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person, including the Borrower and any Subsidiary) at the time owned by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, "Permitted Liens"):

(a) Liens on property or assets of the U.S. Borrower and its Subsidiaries existing on the Closing Date and set forth on Schedule 7.02(a); provided, that such Liens shall secure only those obligations that they secure on the Closing Date and shall not subsequently apply to any other property or assets of the U.S. Borrower or any Subsidiary other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien, and (B) proceeds and products thereof;

(b) (i) Liens created under the Loan Documents (including, without limitation, Liens created under the Security Documents securing obligations permitted under Section 7.01(c)) or permitted in respect of any Mortgaged Property by the terms of the applicable Mortgage, (ii) Liens securing Indebtedness incurred pursuant to Section 7.01(b)(ii) (including Liens securing obligations in respect of Swap Contracts and Cash Management Agreements secured under the documents governing such Indebtedness and otherwise permitted to be incurred hereunder), which Liens are subject to the Intercreditor Agreement or another intercreditor agreement substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement and (iii) liens pursuant to the Orders;

(c) [Reserved];

(d) Liens for (i) pre-petition Taxes that were not yet due on the Petition Date or which are being contested in compliance with Section 6.03, (ii) pre-petition Taxes to the extent the payment thereof is stayed by reason of the Cases, the applicable Orders, or other applicable Bankruptcy Court orders, and (iii) post-petition Taxes, assessments or other governmental charges or levies not yet due or that are being contested in compliance with Section 6.03;

(e) Liens imposed by law, such as landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the U.S. Borrower or any Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(f) (i) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing liability to insurance carriers under insurance or self insurance arrangements in respect of such obligations and (ii) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the U.S. Borrower or any Subsidiary;

(g) deposits and other customary Liens to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory and regulatory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(h) zoning restrictions, survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way, covenants, conditions, restrictions and declaration on or with respect to the use of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the U.S. Borrower or any Subsidiary;

(i) Liens securing Indebtedness permitted by Section 7.01(i) (limited to the assets subject to such Indebtedness);

(j) [Reserved];

(k) Liens securing judgments that do not constitute an Event of Default under Section 8.01(j) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(l) Liens disclosed by the title insurance policies delivered on or subsequent to the Closing Date and pursuant to Section 6.10;

(m) any interest or title of a lessor or sublessor under any leases or subleases entered into by the U.S. Borrower or any Subsidiary in the ordinary course of business;

(n) Liens that are contractual rights of set off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the U.S. Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the U.S. Borrower or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the U.S. Borrower or any Subsidiary in the ordinary course of business;

(o) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set off or similar rights;

(p) Liens securing obligations in respect of trade related letters of credit or bank guarantees permitted under Section 7.01(f) or (o) and covering the goods (or the documents of title in respect of such goods) financed by such letters of credit or bank guarantees and the proceeds and products thereof;

(q) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business not interfering in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole;

(r) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(s) Liens solely on any cash earnest money deposits made by the U.S. Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted hereunder;

(t) [Reserved];

(u) [Reserved];

(v) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(w) Liens arising from precautionary Uniform Commercial Code financing statements or consignments entered into in connection with any transaction otherwise permitted under this Agreement;

(x) [Reserved];

(y) [Reserved];

(z) [Reserved];

(aa) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit, bank guarantee or bankers' acceptance issued or created for the account of the U.S. Borrower or any Subsidiary in the ordinary course of business; provided, that such Lien secures only the obligations of the U.S. Borrower or such Subsidiaries in respect of such letter of credit or bank guarantee to the extent permitted under Section 7.01;

(bb) Liens securing insurance premiums financing arrangements, provided, that such Liens are limited to the applicable unearned insurance premiums;

(cc) Liens in favor of the U.S. Borrower or any Subsidiary Loan Party; provided that if any such Lien shall cover any Collateral, the holder of such Lien shall execute and deliver to the Administrative Agent a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent; and

(dd) Liens on deposits securing Swap Contracts permitted under Section 7.01(c) not to exceed \$500,000.

Section 7.03 Sale and Lease Back Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

Section 7.04 Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, an "Investment"), any other person, except:

- (a) the Transactions;
- (b) (i) Investments by the U.S. Borrower or any Subsidiary in the Equity Interests of the U.S. Borrower or any other Loan Party (other than the Jamaican Borrower); (ii) intercompany loans from the U.S. Borrower or any Subsidiary to any other Borrower or any other Loan Party (other than the Jamaican Borrower); and (iii) Guarantees by the U.S. Borrower or any Subsidiary Loan Party of Indebtedness otherwise expressly permitted hereunder of any other Loan Party (other than the Jamaican Borrower).
- (c) Permitted Investments and Investments that were Permitted Investments when made;
- (d) Investments arising out of the receipt by the U.S. Borrower or any Subsidiary of non-cash consideration for the sale of assets permitted under Section 7.05;
- (e) loans and advances to officers, directors, employees or consultants of the U.S. Borrower or any Subsidiary (i) in the ordinary course of business not to exceed \$250,000 and (ii) in respect of payroll payments and expenses in the ordinary course of business;
- (f) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business;
- (g) Swap Contracts approved by the Bankruptcy Court and permitted hereunder;
- (h) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 7.04 and any extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (h) is not increased at any time above the amount of such Investment existing or contractually committed to on the Closing Date;
- (i) Investments resulting from pledges and deposits under Sections 7.02(f), (g), (k), (r) and (s);

(j) [Reserved];

(k) [Reserved];

(l) intercompany loans between Subsidiaries that are not Subsidiary Loan Parties and Guarantees by such Subsidiaries to the extent permitted by Section 7.01(m);

(m) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business or Investments acquired by the U.S. Borrower as a result of a foreclosure by the U.S. Borrower or any of its Subsidiaries with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(n) [Reserved];

(o) [Reserved];

(p) Guarantees by the U.S. Borrower or any Subsidiary of operating leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case entered into by the U.S. Borrower or any Subsidiary prior to the Closing Date in the ordinary course of business;

(q) Investments to the extent that payment for such Investments is made with Equity Interests of Holdings;

(r) [Reserved];

(s) Investments consisting of Restricted Payments permitted under Section 7.06;

(t) [Reserved];

(u) [Reserved];

(v) Investments consisting of the licensing or contribution of intellectual property licenses pursuant to joint marketing arrangements with other persons; and

(w) Guarantees permitted under Section 7.01 (except to the extent such Guarantee is expressly subject to Section 7.04).

Section 7.05 Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into or consolidate or amalgamate with any other person, or permit any other person to merge into or consolidate or amalgamate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets (whether now owned or hereafter acquired), or issue, sell, transfer or otherwise dispose of any Equity Interests of the U.S. Borrower or any Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the assets of any other person or any division, unit or business of any person, except that this Section shall not prohibit:

(a) (i) the purchase and sale of inventory in the ordinary course of business by the U.S. Borrower or any Subsidiary, (ii) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business by the U.S. Borrower or any Subsidiary, (iii) the sale of surplus,

obsolete or worn out equipment or other property (excluding Inventory) in the ordinary course of business by the U.S. Borrower or any Subsidiary or (iv) the sale of Permitted Investments in the ordinary course of business;

(b) any sale of any assets pursuant to the Downstream Sale Process or the Upstream Sale Process or any other sale of assets set out in the Acceptable Business Plan;

(c) [Reserved];

(d) [Reserved];

(e) Investments permitted by Section 7.04, Permitted Liens and Restricted Payments permitted by Section 7.06;

(f) the sale or other disposition of defaulted receivables and the compromise, settlement and collection of receivables in the ordinary course of business or in bankruptcy or other proceedings concerning the other account party thereon and not as part of an accounts receivables financing transaction;

(g) [Reserved];

(h) [Reserved]; and

(i) leases, licenses (on a non-exclusive basis with respect to intellectual property), or subleases or sublicenses (on a non-exclusive basis with respect to intellectual property) of any real or personal property in the ordinary course of business.

Notwithstanding anything to the contrary contained in Section 7.05 above, no sale, transfer or other disposition of assets shall be permitted by this Section 7.05 unless such disposition is for fair market value (as determined in good faith by the U.S. Borrower), or if not fair market value, the shortfall is permitted as an Investment under Section 7.04.

Section 7.06 Dividends and Distributions. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any Subsidiary to purchase or acquire) any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, "Restricted Payments"); provided, however, that:

(a) any Subsidiary of the U.S. Borrower may make Restricted Payments to the U.S. Borrower or to any Wholly Owned Subsidiary of the U.S. Borrower (or, in the case of non Wholly Owned Subsidiaries, to the U.S. Borrower or any Subsidiary that is a direct or indirect parent of such Subsidiary and to each other owner of Equity Interests of such Subsidiary on a pro rata basis (or more favorable basis from the perspective of the U.S. Borrower or such Subsidiary) based on its relative ownership interests so long as any repurchase of its Equity Interests from a person that is not the U.S. Borrower or a Subsidiary is permitted under Section 7.04); and

(b) subject to the approval of the Bankruptcy Court and in accordance with the Bankruptcy Court orders, the U.S. Borrower may make Restricted Payments to Holdings in respect of (i) overhead, legal, accounting and other professional fees and expenses of Holdings, (ii) fees and expenses related to any public offering or private placement of debt or equity securities of Holdings whether or not consummated, (iii) franchise Taxes or similar Taxes and fees and expenses in connection with the maintenance of Holdings' existence and Holdings' ownership of the U.S. Borrower, (iv) payments permitted by Section 7.07(b), (v) the portion (which shall be 100% for so long as Holdings owns no assets other than the Equity Interests in the U.S. Borrower or Holdings) of the tax liability due in each relevant jurisdiction in respect of consolidated, combined, unitary or affiliated returns for the relevant jurisdiction of Holdings attributable to the U.S. Borrower or its Subsidiaries, (vi) tax liabilities of Holdings incurred as a result of transactions occurring prior to the Closing Date, and (vii) customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of Holdings, in each case in order to permit Holdings to make such payments; provided, that in the case of clauses (i), (ii) and (iii), the amount of such Restricted Payments shall not exceed the portion of any amounts referred to in such clauses (i), (ii) and (iii) that are allocable to the U.S. Borrower and its Subsidiaries (which shall be 100% for so long as Holdings owns no assets other than the Equity Interests in the U.S. Borrower or Holdings).

Section 7.07 Transactions with Affiliates. (a) Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates or any known direct or indirect holder of 10% or more of any class of capital stock of Holdings or the U.S. Borrower in a transaction involving aggregate consideration in excess of \$500,000, unless such transaction is (i) otherwise permitted (or required) under this Agreement or (ii) upon terms no less favorable to the U.S. Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's length transaction with a person that is not an Affiliate. For purposes of this Section 7.07, any transaction with any Affiliate or any such 10% holder shall be deemed to have satisfied the standard set forth in clause (ii) of the immediately preceding sentence if such transaction is approved by a majority of the disinterested members of the Board of Directors of Holdings or the U.S. Borrower.

(b) The foregoing paragraph (a) shall not prohibit, to the extent otherwise permitted under this Agreement,

(i) [Reserved],

(ii) [Reserved],

(iii) [Reserved],

(iv) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of Holdings, the U.S. Borrower and its Subsidiaries in the ordinary course of business (limited, in the case of Holdings, to the portion of such fees and expenses that are allocable to the Borrower and its Subsidiaries (which shall be 100% for so long as Holdings, as the case may be, owns no assets other than the Equity Interests in the U.S. Borrower, Holdings and assets incidental to the ownership of the U.S. Borrower and its Subsidiaries)),

(v) transactions pursuant to the Transaction Documents and permitted transactions, agreements and arrangements in existence on the Closing Date and set forth on Schedule 7.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders when taken as a whole in any material respect and other transactions, agreements and arrangements described on Schedule 7.07,

- (vi) [Reserved],
- (vii) Restricted Payments permitted under Section 7.06, including payments to Holdings,
- (viii) any purchase by Holdings of the Equity Interests of the U.S. Borrower; provided, that any Equity Interests of the U.S. Borrower purchased by Holdings shall be pledged to the Administrative Agent on behalf of the Lenders pursuant to the Collateral Agreement,
- (ix) [Reserved];
- (x) transactions with Wholly Owned Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business in a manner consistent with past practice,
- (xi) [Reserved],
- (xii) [Reserved],
- (xiii) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business,
- (xiv) [Reserved];
- (xv) the issuance, sale, transfer of Equity Interests of Borrower to Holdings and capital contributions by Holdings to Borrower,
- (xvi) without duplication of any amounts otherwise paid with respect to Taxes, payments by Holdings, the U.S. Borrower and its Subsidiaries pursuant to [tax sharing agreements] among Holdings, the U.S. Borrower and its Subsidiaries on customary terms that require each party to make payments when such Taxes are due or refunds received of amounts equal to the income tax liabilities and refunds generated by each such party calculated on a separate return basis and payments to the party generating tax benefits and credits of amounts equal to the value of such tax benefits and credits made available to the group by such party,
- (xvii) [Reserved];
- (xviii) [Reserved],
- (xix) [Reserved],
- (xx) [Reserved],
- (xxi) transactions with Metals USA Holdings Corp., Berry Plastics Group, Inc. or any subsidiary thereof on terms consistent with past practice prior to the Transactions,
- (xxii) the provision to subsidiaries of cash management, accounting and other overhead services in the ordinary course of business undertaken in good faith (as certified in an officer's certificate executed by a Responsible Officer of the Borrower Representative) and not for the purpose of circumventing any covenant set forth in this Agreement, or

(xxiii) intercompany transactions undertaken in good faith (as certified in an officer's certificate executed by a Responsible Officer of the Borrower Representative) for the purpose of improving the consolidated tax efficiency of the U.S. Borrower and its subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement.

Section 7.08 Business of the Borrowers and their Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by any of them on the Closing Date and any business or business activities incidental or related thereto, or any business or activity that is reasonably similar or complementary thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

Section 7.09 Limitation on Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc. (a) Amend or modify in any manner materially adverse to the Lenders (as determined in good faith by such Borrower), or grant any waiver or release under or terminate in any manner (if such granting or termination shall be materially adverse to the Lenders taken as a whole (as determined in good faith by such Borrower)), the articles or certificate of incorporation, by laws, limited liability company operating agreement, partnership agreement or other organizational documents of the U.S. Borrower or any of its Subsidiaries.

(b) (i) Amend or modify, or permit the amendment or modification of, any provision of any Material Indebtedness, or any agreement, document or instrument evidencing or relating thereto or (ii) amend or modify the Prepetition ABL Credit Agreement other than amendments or modifications made in accordance with the Intercreditor Agreement.

(c) Permit any Subsidiary to enter into any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions or the making of cash advances to the U.S. Borrower or any Subsidiary that is a direct or indirect parent of such Subsidiary or (ii) the granting of Liens by the U.S. Borrower or such Subsidiary pursuant to the Security Documents, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(A) restrictions imposed by applicable law; and

(B) contractual encumbrances or restrictions in effect on the Closing Date under Indebtedness existing on the Closing Date and set forth on Schedule 7.01 or the Senior Notes.

Section 7.10 Modifications to Orders. Seek or consent to any amendment, supplement or any other modification of any of the terms of the Orders after such orders are entered by the Bankruptcy Court without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders (and, with respect to any material change, the Required Lenders).

Section 7.11 Holdings Covenants. Holdings covenants and agrees with each Lender that unless and until (i) all Commitments shall have been terminated and (ii) all DIP Term Credit Obligations arising under the Loan Documents (other than contingent obligations for unasserted claims) shall have been repaid, unless the Required Lenders shall otherwise consent in writing, Holdings will not create, incur, assume or permit to exist any Lien (other than Liens of a type described in Section 7.02(b), (d), (e) or (k)) on any of the Equity Interests issued by the U.S. Borrower other than the Liens created under the Loan Documents.

Section 7.12 Filing of Motions and Applications. Without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders (and with respect to any

material change or modification, the Required Lenders), apply to the Bankruptcy Court for, or join in or support any motion or application seeking, authority to (a) take any action that is prohibited by the terms of any of the Loan Documents or the Orders, (b) refrain from taking any action that is required to be taken by the terms of any of the Loan Documents or the Orders, or (c) permit any Indebtedness or Claim to be pari passu with or senior to any of the Obligations, except as expressly stated in the Orders.

Section 7.13 Superpriority Claim. Incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against the U.S. Borrower or any of its Subsidiaries, except as expressly stated in the Orders.

Section 7.14 Use of Proceeds. Use any proceeds of the Loans for a purpose that is not specifically permitted by this Agreement and the Orders or set forth in the Budget (subject to the Permitted Variances).

Section 7.15 Budget. Amend or modify the Budget without the prior written consent of the Administrative Agent and the Required Lenders.

Section 7.16 Reorganization Plan. Pursue or support the confirmation of any Reorganization Plan proposed for either Borrower in the Cases other than an Acceptable Business Plan.

ARTICLE VIII EVENTS OF DEFAULT

Section 8.01 Events of Default. In case of the happening of any of the following events (each, an “Event of Default”):

(a) any representation or warranty made or deemed made by Holdings, the Borrowers or any other Loan Party herein or in any other Loan Document or any certificate or document delivered pursuant hereto or thereto shall prove to have been false or misleading in any material respect when so made or deemed made;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or in the payment of any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(d) default shall be made in the due observance or performance by Holdings, the Borrower or any of its Subsidiaries of any covenant, condition or agreement contained in Section 6.01(a), 6.05(i), 6.08, 6.10(h), 6.12, 6.15, 6.16 or in Article VII;

(e) default shall be made in the due observance or performance by Holdings, the U.S. Borrower or any of its Subsidiaries of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (b), (c) and (d) above) and such default shall continue unremedied for a period of 30 days (or 60 days if such default results solely from a Foreign Subsidiary’s failure to duly observe or perform any such covenant, condition or agreement) after notice thereof from the Administrative Agent to the Borrower Representative;

(f) except to the extent the holder thereof would be stayed from exercising remedies as a result of the Cases (i) any Loan Party or any Subsidiary thereof (A) fails to make payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and beyond any applicable grace period, regardless of amount, in respect of any Material Indebtedness (other than the DIP ABL Facility and other than in respect of Swap Contracts), (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition shall exist, under any agreement or instrument relating to any Material Indebtedness, if the effect of such failure, event or condition (giving effect to any applicable grace period) is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Material Indebtedness to be declared to be due and payable prior to its stated maturity or (C) shall be required by the terms of such Material Indebtedness to offer to prepay or repurchase such Material Indebtedness (or any portion thereof) prior to the stated maturity thereof; or (ii) there occurs under any Swap Contract or Swap Obligation (other than as a result of the Cases) an Early Termination Date (as defined in such Swap Contract) resulting from any event of default under such Swap Contract as to which any Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) and the Swap Termination Value owed by a Loan Party or any Subsidiary thereof as a result thereof is greater than \$500,000; provided that this clause (f) shall not apply to secured Indebtedness that becomes due, or which any Loan Party or any Subsidiary thereof shall be required to prepay or repurchase, as a result of the sale or transfer (including by way of condemnation or casualty) of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness;

(g) there shall have occurred a Change in Control;

(h) (i) any Loan Party or any of its respective Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Indebtedness under the DIP ABL Facility when due (after giving effect to any applicable grace period), (ii) there shall occur any breach of Section [●] of the DIP ABL Facility as in effect on the date hereof, (iii) there shall occur any Event of Default (as defined in the DIP ABL Loan Agreement) under the DIP ABL Loan Documents or (iv) notwithstanding the Intercreditor Agreement, the DIP ABL Facility shall be amended or refinanced without the prior written consent of the Required Lenders;

(i) An order shall be entered terminating the Loan Parties' exclusivity period for proposing a Reorganization Plan;

(j) the failure by Holdings, the U.S. Borrower or any Subsidiary to pay one or more final judgments with respect to any post-petition liability aggregating in excess of \$500,000 (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days;

(k) (i) a trustee shall be appointed by a United States district court to administer any ERISA Plan, (ii) an ERISA Event or ERISA Events shall have occurred with respect to any ERISA Plan or Multiemployer Plan, (iii) the PBGC shall institute proceedings (including giving notice of intent thereof) to terminate any ERISA Plan or Plans or Multiemployer Plan or Plans, (iv) Holdings, the U.S. Borrower or any Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, (v) Holdings, the U.S. Borrower or any Subsidiary shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any ERISA Plan; and in each case in clauses (i) through (v) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect;

(l) (i) any Loan Document shall for any reason be asserted in writing by Holdings, either Borrower or any Subsidiary not to be a legal, valid and binding obligation of any party thereto, (ii) any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to Holdings, the Borrowers and the Borrowers' Subsidiaries on a consolidated basis shall cease to be, or shall be asserted in writing by the Borrower Representative or any other Loan Party not to be, a valid and perfected security interest (perfected as or having the priority required by this Agreement or the relevant Security Document and subject to such limitations and restrictions as are set forth herein and therein) in the securities, assets or properties covered thereby, except to the extent that any such loss of perfection or priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Agreement or to file Uniform Commercial Code continuation statements or take the actions described on Schedule 4.04 and except to the extent that such loss is covered by a lender's title insurance policy and the Administrative Agent shall be reasonably satisfied with the credit of such insurer, or (iii) the Guarantees pursuant to the Security Documents by Holdings, the Borrowers or the Subsidiary Loan Parties of any of the DIP Term Credit Obligations shall cease to be in full force and effect (other than in accordance with the terms thereof), or shall be asserted in writing by Holdings or either Borrower or any Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations; or

(m) the Intercreditor Agreement or any provision thereof shall cease to be in full force and effect (except in accordance with its terms), or any of the Loan Parties party thereto shall deny or disaffirm its respective obligations thereunder or default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the terms thereof;

(n) [Reserved];

(o) [Reserved];

(p) any of the Cases of the Debtors shall be dismissed or converted to a case under Chapter 7 of the U.S. Bankruptcy Code;

(q) a trustee under Chapter 7 or Chapter 11 of the U.S. Bankruptcy Code or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the U.S. Bankruptcy Code shall be appointed in any of the Cases of the Debtors;

(r) an order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Loan Parties;

(s) any Debtor, or any person acting on behalf of any Debtor, shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in clauses (p) through (r) above or the granting of any other relief that if granted would give rise to an Event of Default;

(t) any Loan Party or any of its Subsidiaries, or any person claiming by or through any Loan Party any of its Subsidiaries, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the Administrative Agent or any of the Lenders relating to the DIP Term Loan Facility;

(u) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of the DIP Term Loan Facility,

the DIP ABL Facility and the Carve-Out or as otherwise permitted under the applicable Loan Documents or permitted under the Orders, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the U.S. Bankruptcy Code *pari passu* with or senior to the claims of the Administrative Agent and the Lenders under the DIP Term Loan Facility, or there shall arise or be granted by the Bankruptcy Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the U.S. Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except, in each case, as expressly provided in the Loan Documents or in the Orders then in effect (but only in the event specifically consented to by the Administrative Agent), whichever is in effect

(v) the Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the U.S. Bankruptcy Code to the holder or holders of any security interest) to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Debtors which have a value in excess of \$500,000 in the aggregate (excluding purchase money financings and equipment financings) or (ii) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(w) the Final Order Entry Date shall not have occurred by the date that is 30 days (or such later date as agreed to by the Required Lenders) following the Interim Order Entry Date;

(x) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, or Holdings or any Subsidiary of Holdings shall apply for authority to do so, in each case without the prior written consent of the Required Lenders and, to the extent affecting the rights or obligations of the Administrative Agent, the Administrative Agent;

(y) the Interim Order (prior to Final Order Entry Date) or Final Order (on and after the Final Order Entry Date) shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Administrative Agent and the Required Lenders;

(z) any of the Loan Parties shall fail to comply with the Interim Order (prior to Final Order Entry Date) or Final Order (on and after the Final Order Entry Date) in any material respect;

(aa) an order in the Cases shall be entered (i) charging any of the Collateral under Section 506(c) of the U.S. Bankruptcy Code against the Lenders or (ii) limiting the extension under Section 552(b) of the U.S. Bankruptcy Code of the Liens of the Prepetition Term Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date, or the commencement of other actions that is materially adverse to Administrative Agent, the Lenders or their respective rights and remedies under the DIP Term Loan Facility in any of the Cases or inconsistent with any of the Loan Documents;

(bb) if the Final Order does not include a waiver, in form and substance satisfactory to the Required Lenders, of (i) the right to surcharge the Collateral under Section 506(c) of the U.S. Bankruptcy Code and (ii) any ability to limit the extension under Section 552(b) of the U.S. Bankruptcy Code of the Liens of the Prepetition Term Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(cc) a Reorganization Plan shall be confirmed in any of the Cases of the Debtors, or any order shall be entered which dismisses any of the Cases of the Debtors and which order does not provide for payment in full in cash of the DIP Term Credit Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable), or any of the Loan Parties and their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order;

(dd) any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in clauses (i) through (cc) hereof or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal;

(ee) any Loan Party or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the Superpriority Claims and Liens granted to secure the DIP Term Credit Obligations or any other rights granted to the Administrative Agent and the Lenders in the Orders or this Agreement or (ii) any relief under Sections 506(c) or 552(b) of the U.S. Bankruptcy Code with respect to any Collateral;

(ff) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent or any Lender with respect to the DIP Term Credit Obligations, other than to challenge the occurrence of a Default or Event of Default;

(gg) without the consent of the Administrative Agent and the Required Lenders, the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any prepetition agent or lender that is inconsistent with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date);

(hh) without the Administrative Agent's and the Required Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Loan Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Administrative Agent's consent (acting at the direction of the Required Lenders) or to obtain any financing under Section 364 of the U.S. Bankruptcy Code other than the facility hereunder and the DIP ABL Facility unless such motion or order contemplates payment in full in cash of the Obligations immediately upon consummation of the transactions contemplated thereby;

(ii) any Loan Party or any person on behalf of any Loan Party shall file any motion seeking authority to consummate a sale of assets of the Loan Parties or the Collateral (other than any sale of assets pursuant to the Downstream Sale Process or the Upstream Sale Process or any other sale of assets set out in the Acceptable Business Plan) to the extent having a value in excess of \$500,000 outside the ordinary course of business and not otherwise permitted hereunder;

(jj) if any Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of Loan Parties and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; provided, that the Loan Parties shall have five Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or another court to address any such court order;

(kk) any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition Indebtedness or payables other than payments (i) in respect of accrued payroll and related expenses as of the commencement of the Cases, (ii) in respect of certain creditors and (iii) permitted under this Agreement, in each case, to the extent authorized by one or more “first or second day orders” (or other orders with the consent of the Required Lenders) and consistent with the Budget;

(ll) if, unless otherwise approved by the Administrative Agent and the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Cases and such order shall not be reversed or vacated within 10 days;

(mm) without the Administrative Agent’s and the Required Lenders’ consent, any Loan Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (a) to grant or impose, under Section 364 of the U.S. Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral (as defined in the Orders), whether senior, equal or subordinate to the Administrative Agent’s or the DIP ABL Agent’s liens and security interests or; (b) to modify or affect any of the rights of the Administrative Agent, the DIP ABL Agent, the lenders under the DIP ABL Facility or the Lenders under the Orders, the Loan Documents, or the DIP ABL Loan Documents by any plan of reorganization confirmed in the Cases or subsequent order entered in the Cases,

then, and in every such event, and at any time thereafter during the continuance of such event, the Administrative Agent, at the request of the Required Lenders, shall, by notice to the Borrower Representative, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of such Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by such Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding and (iii) exercise all rights and remedies granted to it under any Loan Document and all its rights under any other applicable law or in equity.

Section 8.02 [Reserved].

Section 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.01 (or after the Loans have automatically become immediately due and as set forth in the proviso to Section 8.01), any amounts received on account of the Finance Obligations shall, subject to the provisions of Section 2.13, be applied by the Administrative Agent in the following order:

FIRST, to payment of that portion of the Finance Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

SECOND, to payment of that portion of the Finance Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including amounts payable under Article III and fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender)) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

THIRD, to payment of that portion of the Finance Obligations constituting unpaid principal of the Loans, accrued and unpaid interest on the Loans and other DIP Term Credit Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third held by them; and

LAST, the balance, if any, after all of the Finance Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

ARTICLE IX THE AGENCY PROVISIONS

Section 9.01 Appointment and Authority.

(a) Administrative Agent. Each of the Lenders (in its capacities as a Lender and on behalf of itself and its Affiliates) hereby irrevocably appoints Cortland Capital Market Services LLC to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and the Borrowers shall not have rights as third party beneficiaries of any of such provisions (except as expressly provided in Section 9.06). It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (in its capacities as a Lender and on behalf of itself and its Affiliates) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the DIP Term Credit Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents (and subject to the Intercreditor Agreement), or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

Section 9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the U.S. Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to either Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.01) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given in writing to the Administrative Agent by the Borrower Representative or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The provisions of this Article IX are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party or respective Affiliate shall have rights as a third party beneficiary of any such provisions.

Section 9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate,

consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower Representative. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower Representative, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (iv) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower Representative and such Person remove such Person as Administrative Agent and, in consultation with the Borrower Representative, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications

and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower Representative and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08 [Reserved].

Section 9.09 [Reserved].

Section 9.10 Collateral and Guaranty Matters. Without limiting the provisions of Section 9.09 each of the Lenders (in its capacities as a Lender) irrevocably authorizes the Administrative Agent, at its option and in its discretion, to:

(i) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (A) upon termination of the Commitments of all the Lenders and payment in full of all DIP Term Credit Obligations (other than contingent indemnification obligations), (B) with respect to any property that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document or (C) if approved, authorized or ratified in writing in accordance with Section 10.01;

(ii) release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents;

(iii) subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02(a) or (i); and

(iv) execute and deliver the Intercreditor Agreement, and any other intercreditor agreement necessary or desirable to permit the incurrence by the Loan Parties of secured indebtedness permitted to be incurred hereunder with the priority permitted hereunder and perform its obligations and duties, and exercise its rights and remedies, thereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower Representative's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Agreement and the other Loan Documents or to subordinate its interest in such item, or to release such Subsidiary Loan Party from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Without limiting the foregoing, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Finance Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including any sale or disposition conducted under a plan of reorganization), any Secured Party may be the purchaser of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender in its or their respective individual capacities) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply any of the Finance Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent on behalf of the Secured Parties at such sale or other disposition. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Finance Obligations provided under the Loan Documents, to have agreed to the foregoing provisions. The provisions of this paragraph are for the sole benefit of the Secured Parties and shall not afford any right to, or constitute a defense available to, any Loan Party.

ARTICLE X MISCELLANEOUS

Section 10.01 Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by either Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent or ratification of the Required Lenders or such other number or percentage of Lenders as may be specified herein) and the applicable Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that (x) the Administrative Agent and the Borrower

Representative may, with the consent of the other, amend, modify or supplement this Agreement and any other Loan Document to cure any ambiguity, omission, typographical error, mistake, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Agent or any Lender, to comply with local law or the advice of local counsel or to cause one or more Loan Documents to be consistent with other Loan Documents and (y) no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.01) without the written consent of such Lender;

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest or fees due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of either Borrower to pay interest at the Default Rate;

(iv) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(v) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vi) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(vii) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

and provided, further, that: (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (ii) no amendment, waiver or consent which would require the consent of a Lender but for the fact that it is a Defaulting Lender shall be enforced against it without its consent. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately more adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

If any Lender (a “Non-Consenting Lender”) does not consent to a proposed amendment, waiver, consent, release, discharge or termination with respect to any Loan Document that, pursuant to the terms of this Section 10.01, requires the consent of each Lender (or each affected Lender) and that has been approved by the Required Lenders, the Borrower Representative may replace such Non-Consenting Lender in accordance with Section 10.14.

Section 10.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Notwithstanding anything to the contrary contained herein (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to the Borrower Representative, Holdings or any other Loan Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to either Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower Representative may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received when sent to the intended recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, “Agent Parties”) have any liability to Holdings, either Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials through the Internet.

(d) Change of Address, Etc. Each of Holdings, the Borrower Representative and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower Representative and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrowers or their securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including electronic Borrowing Requests) purportedly given by the Borrower Representative or on behalf of either Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower Representative shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on any notice purportedly given by or on behalf of the Borrower Representative in the absence of gross negligence or willful misconduct by the Administrative Agent in relying on any notice purportedly given by or on behalf of the Borrowers, such Lender or Related Party, as applicable, as determined in a final and non-appealable judgment by a court of competent jurisdiction.

Section 10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or by the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and provided under each other

Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, but subject to the Intercreditor Agreement, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.01 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Section 10.09 (subject to the terms of Section 2.11) or (iii) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.01 and (y) in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers agree to pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and invoiced fees, charges and disbursements of Kaye Scholer LLP, as counsel for the Administrative Agent, Weil Gotshal & Manges LLP, as counsel for the Lenders and, if necessary, the reasonable fees, charges and disbursements of one local counsel to each of the Administrative Agent and the Lenders per jurisdiction), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents (including expenses incurred in connection with due diligence and initial ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower Representative) or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable and invoiced fees, charges and disbursements of any special counsel (limited to one firm for the Administrative Agent and one firm for the Lenders unless, in the reasonable opinion of any such Lender seeking reimbursement, such joint representation would be inappropriate due to the existence of any actual or potential conflict of interest, in which case any such Lender shall inform the Borrower Representative of such conflict and the Borrowers shall reimburse the legal fees and expenses of no more than such number of additional outside counsel for the Lenders as is necessary to avoid any actual or potential conflict of interest) and local counsel (limited to one firm for the Administrative Agent and one firm for the Lenders in each relevant jurisdiction unless, in the reasonable opinion of any such Lender seeking reimbursement, such joint representation would be inappropriate due to the existence of any actual or potential conflict of interest, in which case any such Lender shall inform the Borrower Representative of such conflict and the Borrowers shall reimburse the legal fees and expenses of no more than such number of additional outside counsel for the Lenders as is necessary to avoid any actual or potential conflict of interest) for the Administrative Agent and the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder,

including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable counsel fees, charges and disbursements of not more than one counsel, plus, if necessary, one local counsel per jurisdiction (except the allocated costs of in-house counsel) unless, in the reasonable opinion of any such Indemnatee seeking indemnity, such joint representation would be inappropriate due to the existence of any actual or potential conflict of interest, in which case such Indemnatee or Indemnitees, as the case may be, shall inform the Borrower Representative of such conflict and the Borrowers shall reimburse the legal fees and expenses of no more than such number of additional outside counsel for the Indemnitees as is necessary to avoid any actual or potential conflict of interest), incurred by any Indemnatee or asserted against any Indemnatee by Person (including either Borrower or any other Loan Party) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions and the other transactions contemplated hereby or thereby (including, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01)), (ii) any Loan or the use of the proceeds therefrom, or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by either Borrower or any other Loan Party, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee (for purposes of this proviso only, each of the Administrative Agent or any Lender shall be treated as several and separate Indemnitees, but each of them together with its respective Related Parties, shall be treated as a single Indemnatee). Subject to and without limiting the generality of the foregoing sentence, the Borrowers agree to indemnify each Indemnatee against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel or consultant fees, charges and disbursements (limited to not more than one counsel, plus, if necessary, one local counsel per jurisdiction) (except the allocated costs of in-house counsel), incurred by or asserted against any Indemnatee arising out of, in any way connected with, or as a result of (A) any claim related in any way to Environmental Laws and Holdings, the U.S. Borrower or any of its Subsidiaries, or (B) any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any Property; provided, that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee. None of the Indemnitees (or any of their respective Affiliates) shall be responsible or liable to Holdings, the U.S. Borrower or any of their respective subsidiaries, Affiliates or stockholders or any other person or entity for any special, indirect, consequential or punitive damages, which may be alleged as a result of the Facilities or the Transactions. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes (other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim). The provisions of this Section 10.04 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the DIP Term Credit Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative

Agent or any Lender. All amounts due under this Section 10.04 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) Reimbursement by Lenders. To the extent that Holdings and the Borrowers for any reason fail indefeasibly to pay any amount required under subsection (a) or (b) of this Section to be paid by it or them to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's outstanding Loans and unused Commitments at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' percentage (carried out to the ninth decimal place) of the Facility (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.02(a).

(d) Waiver of Consequential Damages. To the fullest extent permitted by applicable Law, each Borrower shall not assert, and hereby waives, and acknowledges that no other Loan Party shall have, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnatee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section 10.04 shall be payable not later than ten Business Days after demand therefor; provided, however, any Indemnatee shall promptly refund an indemnification payment received hereunder to the extent that there is a final judicial determination that such Indemnatee was not entitled to indemnification with respect to such payment pursuant to this Section 10.04.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments of all the Lenders and the repayment, satisfaction or discharge of all the other DIP Term Credit Obligations.

Section 10.05 Payments Set Aside. To the extent that any payment by or on behalf of either Borrower or any other Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (i) to the extent of such recovery, the

obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (ii) of the preceding sentence shall survive the payment in full of the DIP Term Credit Obligations and the termination of this Agreement.

Section 10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither either Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(e). Nothing in this Agreement, expressed or implied, is intended to confer, shall be construed to confer, or shall confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in subsection (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date, shall not be less than \$1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing under Section 8.01(b), (c), (h) or (i), the Borrower Representative otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities and any facilities provided pursuant to the second paragraph of Section 10.01 on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower Representative (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrowers shall be deemed to have consented to any such assignment unless the Borrower Representative shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof.

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any unfunded Commitment if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Loan to a Person that is not a Lender, an Affiliate of a Lender, an Approved Fund or either Borrower.

(iv) Assignment and Acceptance. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, all applicable tax forms and all documentation and other information with respect to the assignee that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT ACT.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Loan Party, (B) to any Permitted Holder or Affiliate thereof, (C) to any Defaulting Lender or any of its Subsidiaries, or (D) to any natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower Representative and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon). Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any

Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower Representative (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 10.06.

(c) Register. (i) The Administrative Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower Representative and any Lender, at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or other substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

(ii) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), all applicable tax forms, the processing and recordation fee referred to in paragraph (b)(iv) of this Section 10.06 (unless waived in accordance with such paragraph) and any written consent to such assignment required by paragraph (b)(iii) of this Section 10.06, the Administrative Agent shall promptly accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (c)(ii).

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower Representative or the Administrative Agent, sell participations to any Person (other than a natural Person, a known Defaulting Lender or either Borrower or any of such Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain

solely responsible to the other parties hereto for the performance of such obligations and (iii) such Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any of the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clause (y) of the first proviso to Section 10.01 that affects such Participant and requires the consent of each Lender directly affected thereby. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation); provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.14 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower Representative's request and expense, to use reasonable efforts to cooperate with the Borrower Representative to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments or Loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (i) to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such

Information and instructed to keep such Information confidential); (ii) to the extent required or requested by any applicable regulatory authority having jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (iv) to any other party hereto; (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing confidentiality provisions substantially the same (and at least as restrictive) as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the obligations under this Agreement, (vii) (A) any rating agency in connection with rating the U.S. Borrower or its Subsidiaries or the credit facilities provided hereunder or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, in each case on a confidential basis, (viii) with the consent of the Borrower Representative or (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the U.S. Borrower or any Subsidiary. For purposes of this Section, “Information” means all information received from Holdings, the U.S. Borrower or any Subsidiary relating to Holdings, the U.S. Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Holdings, the U.S. Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding any other provision of this Agreement, any other Loan Document or any Assignment and Acceptance, the provisions of this Section 10.07 shall survive with respect to the Administrative Agent and each Lender until the second anniversary of the Administrative Agent or Lender ceasing to be the Administrative Agent or a Lender, respectively.

Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning Holdings, the U.S. Borrower or one or more Subsidiaries, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Laws, including Federal and state securities Laws.

Section 10.08 Platform; Borrower Materials. Each of Holdings and each Borrower hereby acknowledges that (i) the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of Holdings and the Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the “Platform”) and (ii) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrowers or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. Each of Holdings and each Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that: (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrowers shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing

any material non-public information (although it may be sensitive and proprietary) with respect to each Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

Section 10.09 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of either Borrower or any other Loan Party against any and all of the obligations of such Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Affiliate, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.11 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Finance Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and its respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have. Each Lender agrees to notify the Borrower Representative and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.10 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the applicable Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the DIP Term Credit Obligations hereunder.

Section 10.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.02, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have

received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.12 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Credit Event, and shall continue in full force and effect as long as any Loan or any other DIP Term Credit Obligation shall remain unpaid or unsatisfied.

Section 10.13 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.13, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.14 Replacement of Lenders. If the Borrowers are entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrowers the right to replace a Lender as a party hereto, then the Borrowers may, at their sole expense and effort, upon notice from the Borrower Representative to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) unless waived, the Borrower Representative or such assignee shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(ii) such Lender shall have received payment of an amount equal to the outstanding par principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Sections 3.05 and (solely in the case of Non-Consenting Lenders) 2.08(b)) from such assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Representative (in the case of all other amounts);

(iii) in the case of any assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver or consent, as applicable, by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this Section 10.14 may be effected pursuant to, and recorded on the Register after execution of, an Assignment and Acceptance executed by the Borrower Representative, the Administrative Agent and the assignee and the Lender required to make such assignment need not be a party thereto. Each Lender agrees that, if the Borrowers elect to replace such Lender in accordance with this Section, it shall promptly deliver to the Administrative Agent any Note (if Notes have been issued in respect of such Lender's Loans) subject to such Assignment and Acceptance. Nothing in this Section 10.14 shall be deemed to prejudice any rights that either Borrower may have against any Lender that is a Defaulting Lender.

Section 10.15 Governing Law; Jurisdiction Etc.

(a) Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND TO THE EXTENT APPLICABLE THE BANKRUPTCY CODE WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF THAT WOULD REQUIRE THE APPLICATION OF LAWS OF ANOTHER JURISDICTION.

(b) Submission to Jurisdiction. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT, AND IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) OR REFUSES TO EXERCISE JURISDICTION, THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST EITHER BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) Waiver of Venue. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.17 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrowers acknowledge and agree, and acknowledge their Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between either Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) each Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for either Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender has any obligation to either Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of either Borrower and its Affiliates, and neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to either Borrower or its Affiliates. To the fullest extent permitted by law, each Borrower hereby waives and releases any claims that it may have against the Administrative Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.18 Electronic Execution of Assignments and Certain Other Documents.

The words “execute,” “execution,” “signed,” “signature,” and words of like import in any Assignment and Acceptance or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.19 USA Patriot Act Notice. Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into Law October 26, 2001) (the “Patriot Act”), it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Borrower in accordance with the Patriot Act. Each Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the Patriot Act.

Section 10.20 Intercreditor Agreement. Notwithstanding anything to the contrary set forth herein or in any other Loan Document, this Agreement is subject to the terms and provisions of the Intercreditor Agreement. In the event of an inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.

Section 10.21 Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise disposes of all or any portion of any of the Equity Interests or assets of any Subsidiary Loan Party to a person that is not (and is not required to become) a Loan Party in a transaction not prohibited by Section 7.05, any Liens created by any Loan Document in respect of such Equity Interests or assets shall be automatically released and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower Representative and at the Borrower Representative’s expense to release any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of the Equity Interests of any Subsidiary Loan Party in a transaction permitted by Section 7.05 (including through merger, consolidation, amalgamation or otherwise) and as a result of which such Subsidiary Loan Party would cease to be a Subsidiary, such Subsidiary Loan Party’s obligations under the Loan Documents shall be automatically terminated and the Administrative Agent shall promptly (and the Lender hereby authorizes the Administrative Agent to) take such action and execute such documents as may be reasonably requested by Holdings or the Borrower Representative to terminate such Subsidiary Loan Party’s obligations under the Loan Documents. In addition, the Administrative Agent agrees to take such actions as are reasonably requested by Holdings or the Borrower Representative and at the Borrower Representative’s expense to terminate the Liens and security interests created by the Loan Documents when all the DIP Term Credit Obligations (other than contingent indemnification obligations) are paid in full.

Section 10.22 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

NORANDA ALUMINUM HOLDING
CORPORATION,
as Holdings

By: _____
Name:
Title:

NORANDA ALUMINUM ACQUISITION
CORPORATION,
as a Borrower

By: _____
Name:
Title:

NORANDA BAUXITE LIMITED,
as a Borrower

By: _____
Name:
Title:

NORANDA INTERMEDIATE HOLDING
CORPORATION,
as a Guarantor

By: _____
Name:
Title:

NORANDA ALUMINUM, INC.,
as a Guarantor

By: _____
Name:
Title:

GRAMERCY ALUMINA HOLDINGS INC.,
as a Guarantor

By: _____
Name:
Title:

NORANDAL USA, INC.,
as a Guarantor

By: _____
Name:
Title:

GRAMERCY ALUMINA HOLDINGS II, INC.
as a Guarantor

By: _____
Name:
Title:

NORANDA ALUMINA LLC,
as a Guarantor

By: _____
Name:
Title:

NHB CAPITAL, LLC,
as a Guarantor

By: _____
Name:
Title:

CORTLAND CAPITAL MARKET SERVICES
LLC,
as Administrative Agent

By: _____
Name:
Title:

Signature Page to the Debtor-In-Possession Term Loan Credit Agreement

[●],
as a Lender

By: _____
Name:
Title:

Signature Page to the Debtor-In-Possession Term Loan Credit Agreement

Exhibit D

Baird Declaration

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

NORANDA ALUMINUM, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 16-____(____)

(Joint Administration Requested)

**DECLARATION OF JAMES H. BAIRD IN SUPPORT OF DEBTORS' MOTION
FOR ENTRY OF INTERIM AND FINAL ORDERS TO (I) AUTHORIZE
DEBTORS IN POSSESSION TO OBTAIN POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 362, 363 AND 364, (II) GRANT LIENS
AND SUPERPRIORITY CLAIMS TO POST-PETITION LENDERS PURSUANT
TO 11 U.S.C. §§ 364 AND 507, (III) PROVIDE ADEQUATE PROTECTION TO
PRE-PETITION CREDIT PARTIES, (IV) MODIFY AUTOMATIC STAY
PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364 AND 507, (V) SCHEDULE FINAL
HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C) AND
BANKRUPTCY RULE 4001-2; AND (VI) GRANT RELATED RELIEF**

I, James H. Baird, hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury:

1. I am a Partner of PJT Partners LP ("PJT Partners"), a provider of financial advisory services that maintains offices at 280 Park Avenue, New York, New York 10017. I am authorized to make this declaration (the "Declaration") on behalf of PJT Partners. I submit this Declaration in support of *Debtors' Motion for Entry of Interim and Final Orders to (i) Authorize Debtors in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364; (ii) Grant Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507, (iii) Provide Adequate Protection to Pre-Petition Credit Parties, (iv)*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: Noranda Aluminum, Inc. (Del.; 5285), Gramercy Alumina Holdings Inc. (Del.; 1941), Gramercy Alumina Holdings II, Inc. (Del.; 2806), NHB Capital, LLC (Del.; 0777), Noranda Alumina LLC (Del.; 4769), Noranda Aluminum Acquisition Corp. (Del.; 8458), Noranda Aluminum Holding Corp. (Del.; 8550), Noranda Bauxite Ltd. (Jamaica), Noranda Bauxite Holdings Ltd. (St. Lucia), Noranda Intermediate Holding Corp. (Del.; 3238) and Norandal USA, Inc. (Del.; 6477). The address of the Debtors' corporate headquarters is 801 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067.

Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507, (v) Schedule Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c), and Local Rule 4001-2, and (iv) Grant Related Relief (the “DIP Motion”),² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors” or the “Company”) on the date hereof (the “Petition Date”).

QUALIFICATIONS

2. I have a Masters of Business Administration with a concentration in finance from Columbia Business School and an AB from Bowdoin College.

3. In 2002, I joined a division of the Blackstone Group L.P. (“Blackstone”). In 2015, Blackstone spun out its advisory units (including my restructuring group) to become part of PJT Partners.

4. PJT Partners is a global independent financial advisory firm founded by Paul J. Taubman and now comprises a combination of PJT Partners’ original employees and former employees of Blackstone’s financial and strategic advisory services, restructuring and reorganization advisory services, and Park Hill fund placement businesses. The PJT Partners restructuring professionals (also in their former capacity as Blackstone employees) have been conducting business and providing to their clients the same high-quality restructuring services that Blackstone had itself provided since the formation of its restructuring advisory practice in 1991. Specifically, the PJT Partners restructuring professionals (also in their former capacity as Blackstone employees) have assisted and advised numerous chapter 11 debtors in the development of plans of reorganization and are experienced in analyzing restructuring and

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Motion.

chapter 11-related issues. The PJT Partners restructuring professionals (also in their former capacity as Blackstone employees) have been particularly active in large, complex and high-profile bankruptcies and restructurings, including, among others: AbitibiBowater Inc.; Adelphia Communications Corporation; Ambac Financial Group, Inc.; Apex Silver Mines Ltd.; Arch Coal, Inc.; Caesars Entertainment Operating Corporation; Cengage Learning, Inc.; Delta Air Lines, Inc.; Dynegy Inc.; Eastman Kodak Company; Edison Mission Energy; Energy Future Holdings Corporation; Enron Corporation; Excel Maritime Carriers, Ltd.; Flag Telecom Holdings Limited; Flying J. Inc.; Genco Shipping & Trading Limited; General Motors Corporation; Global Crossing Ltd.; Houghton Mifflin Harcourt Publishing Company; Lee Enterprises Inc.; LightSquared Inc.; Los Angeles Dodgers LLC; LyondellBasell Industries; Mirant Corp.; NewPage Corporation; NTK Holdings, Inc.; Patriot Coal Corporation; Quiksilver, Inc.; School Specialty, Inc.; SemGroup; The Star Tribune Company; TerreStar Networks Inc.; Tribune Company; Walter Energy, Inc.; W.R. Grace & Co.; and Winn-Dixie Stores, Inc.

5. I have considerable experience with distressed companies, including advising both debtors and creditors in chapter 11 cases and in out-of-court restructurings. During the past 14 years, I have worked on numerous financings for troubled companies, including debtor-in-possession financings. In addition, as a finance and restructuring professional, I closely follow developments in the financial markets and, in particular, the credit markets, and keep abreast of the terms of current financing transactions in distressed and bankruptcy situations.

6. Members of my team and I have been working closely with the Debtors since our engagement in November 2015 as the Company's investment banker. Among other advisory services, PJT Partners has: (a) analyzed the Debtors' current liquidity and projected

cash flow; (b) assisted the Debtors in evaluating their restructuring and other strategic alternatives; (c) helped the Debtors prepare for a potential chapter 11 filing; and (d) as part of such preparation, conducted a diligent search to obtain postpetition financing for the Debtors on the most competitive terms and conditions available to them. I also have participated in (i) negotiations between the Debtors and their creditors and other interested parties and (ii) meetings with the Debtors' Board of Directors to keep the Board apprised of the restructuring process and provide advice regarding strategic alternatives, including a chapter 11 process.

7. Since PJT Partners' engagement in November 2015, I, along with other members of the team at PJT Partners, have worked closely with the Debtors' senior management team and Alvarez & Marsal ("A&M") and have become knowledgeable about the Debtors' business, finances, operations and systems that allows us to provide an assessment of, and demonstrate the need for, the proposed DIP Facilities (as defined below).

8. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge, experience and information concerning the Debtors, my review of relevant business records and information provided to me by the Debtors and their professionals and PJT Partners employees working under my supervision.

9. I am not being compensated specifically for this testimony. PJT Partners, as a professional proposed to be retained by the Debtors, will receive payments in its capacity as financial advisor to the Debtors. If called upon to testify, I would testify competently to the facts set forth herein.

THE DEBTORS' NEED FOR DIP FINANCING AND USE OF CASH COLLATERAL

10. As is described in further detail in the *Declaration of Dale W. Boyles in Support of Chapter 11 Petitions and First Day Motions* filed substantially contemporaneously herewith (the "First Day Declaration"), the Debtors' businesses have reached a point of

unsustainability. This is due to a number of factors, principal among them is the sustained and dramatic decline in the price of primary aluminum. Additional exacerbating factors have placed significant pressure on the Debtors' already strained businesses, including (i) multiple incidents at the New Madrid Facility (as defined in the First Day Declaration); (ii) the substantial increase in rates the Debtors pay for electricity to power the New Madrid Facility; (iii) an unsuccessful arbitration regarding a production levy Noranda Bauxite Limited ("NBL") is obligated to pay to the government of Jamaica for the bauxite it mines; (iv) a bauxite supply contract with one of NBL's significant customers that is substantially below-market, thereby increasing NBL's operational challenges; and (v) significant labor-related liabilities.

11. The Debtors also have a highly leveraged capital structure that includes, as of the Petition Date: (i) secured indebtedness in the aggregate amount of approximately \$529.6 million, comprised of (a) approximately \$61.5 million in direct borrowings (the "Pre-Petition ABL Loans") and \$44.9 million in letters of credit issued under a revolving senior secured asset-based credit facility (the "Pre-Petition ABL Facility") and (b) approximately \$468 million in principal amount ("Pre-Petition Term Loans") under a term loan credit facility (the "Pre-Petition Term Facility" and together with the Pre-petition ABL Facility, the "Pre-Petition Facilities"), (ii) \$175 million in principal amount of 11% Senior Unsecured Notes due 2019 outstanding, (iii) approximately \$16.875 million in principal amount of unsecured loan obligations outstanding under a credit agreement between Surela Investments Ltd. ("Surela"), a subsidiary of Glencore, plc and NBL and (iv) approximately \$7.3 million under an Amended Mid-Stream Contract plus obligations under a certain Rod Mill Lease. The Pre-Petition ABL Facility is secured by (x) a first-priority lien on substantially all of the accounts, deposits and securities accounts, inventory, and other current assets of the domestic Debtors other than NHB Capital, LLC (collectively, the

“ABL Priority Collateral”) and (y) a second-priority lien on substantially all real estate assets, intellectual property, equipment, capital stock held by the domestic Debtors (other than NHB Capital, LLC) and certain other collateral (other than ABL Priority Collateral) (collectively, the “Term Priority Collateral”). The Pre-Petition Term Facility is secured by (x) a first-priority lien on the Term Priority Collateral and (y) a second-priority lien on the ABL Priority Collateral.

12. PJT Partners was engaged by the Debtors to explore strategic alternatives or an out-of-court restructuring to address these challenges. However, in light of the continuing significant deterioration in aluminum prices, the aforementioned operational and legal setbacks, and continuing pressure on liquidity, it became clear in early 2016 that the Debtors would need to restructure by means of chapter 11 cases.

13. The Debtors have an urgent and immediate need to obtain postpetition or “DIP” financing and use the pre-petition lenders’ Cash Collateral. The Debtors lack sufficient funds on hand and do not generate sufficient funds from operations to fund their businesses. The budget forecasting projected cash flows for the thirteen (13) week period following the Petition Date, attached to the DIP Motion as Exhibit E (the “Approved Budget”), was prepared by A&M in consultation with the Debtors and PJT Partners. As described in the DIP Motion, the Approved Budget reflects the Debtors’ reasonable judgment as to the cash required over the specified period to keep the Debtors’ businesses operational. As shown in the Approved Budget, Cash Collateral alone is not sufficient to fund these Chapter 11 Cases. The Approved Budget suggests that, absent DIP financing and the use of Cash Collateral, the Debtors would run out of the liquidity required to operate their businesses in the first week of the Chapter 11 Cases. It is critical that the Debtors have access to the funding provided under the DIP Facilities and use of Cash Collateral so they can continue to operate their business operations in the ordinary course

to preserve and maximize the value of the Debtors' estates. Without access to the liquidity provided by the DIP Facilities, the Debtors could be forced to idle or shut down facilities, lose valuable customer accounts, or liquidate on an expedited basis, potentially to the material detriment of the Debtors' creditors, customers, vendors, employees, and other parties in interest. In light of the foregoing, I believe that the Debtors require the postpetition financing provided by the DIP Facilities in addition to the use of Cash Collateral.

**THE DEBTORS' NEGOTIATIONS FOR
DIP FINANCING AND USE OF CASH COLLATERAL**

14. As set forth in the First Day Declaration, the Debtors' management team has worked diligently in recent months to address the risks presented by the continued deterioration of the Company's liquidity position. *See* First Day Decl. ¶¶ 45–47.

15. The need to find an immediate and comprehensive liquidity solution, including DIP financing in the event the Company commenced chapter 11 cases, became more urgent at the beginning of January 2016, given, among other things, the unfavorable arbitration ruling concerning the production levy payable to the government of Jamaica and the loss of power for two of the three pot-lines at the New Madrid Facility.

16. In connection with these efforts, the Company identified the lenders under the Pre-Petition ABL Facility (the "Pre-Petition ABL Lenders") and the Pre-Petition Term Facility (the "Pre-Petition Term Lenders", and together with the Pre-Petition ABL Lenders, the "Pre-Petition Lenders") as the most likely sources of postpetition financing that could be obtained given the Company's then-current position and within the time period imposed by the Company's rapidly dwindling liquidity position, particularly given the Pre-Petition Lenders' liens on substantially all of the Company's assets, history with, and understanding of the Company. As a result, the prospect of obtaining postpetition financing from a third-party lender

outside of the Company's existing lenders would have contemplated one of four difficult alternatives: (a) a lender willing to extend postpetition financing on an unsecured basis, (b) a lender willing to extend postpetition financing with priority junior to that of the obligations under the Pre-Petition ABL Facility and Pre-Petition Term Facility, (c) postpetition financing that primed the liens of the Pre-Petition Secured Parties without such parties' consent, or (d) a complete refinancing of the Company's Pre-Petition ABL Facility and/or Pre-Petition Term Facility.

17. In January 2016, PJT Partners, in partnership with the Debtors' other advisors, began discussions with respect to DIP financing with certain of the largest Pre-Petition Term Lenders (the "Pre-Petition Term Lender Group"), the Pre-Petition ABL Agent and each of their respective advisors. On January 11, 2016, the members of the Pre-Petition Term Lender Group executed non-disclosure agreements to ensure that confidential information could be shared freely and to promote an efficient process.

18. In discussing DIP financing with the Pre-Petition Term Lender Group and the Pre-Petition ABL Agent, the Debtors sought to obtain financing sufficient to enable them to continue to operate as a fully integrated enterprise during the course of these Chapter 11 Cases and successfully emerge as such. However, as those discussions progressed, it became clear that the Debtors would not be able to obtain financing sufficient to fund the fully integrated business on an ongoing basis. Accordingly, the Debtors are currently beginning the process of idling all aluminum manufacturing at the New Madrid Facility while continuing the Debtors' Downstream Business (as defined in the First Day Declaration) and the bauxite and alumina businesses, subject to the milestones set forth in the DIP Loan Agreements. Such an approach is, under the current circumstances, the best available alternative to protect the Debtors' business, employees,

and creditors, and offers the most effective and efficient path to maximize the value of the Debtors' estates.

19. The Pre-Petition Facilities are secured by substantially all of the Debtors' assets and it became clear that any DIP financing would necessarily be required to prime the liens securing the obligations under the Pre-Petition Facilities, which PJT Partners confirmed would not be acceptable to the Pre-Petition ABL Agent and the Pre-Petition Term Lender Group. In addition, the Pre-Petition ABL Agent, on behalf of the Pre-Petition ABL Lenders, and the Pre-Petition Term Lender Group indicated that they would not consent to the use of Cash Collateral constituting their applicable priority collateral without participating in the DIP Facilities. In addition, given the Debtors' current circumstances, the PJT Partners team (including myself) concluded that DIP financing on a junior lien basis would not be available.

20. Nevertheless, during the month of January 2016, PJT Partners contacted eight potential alternative providers of DIP financing. While one of the third-parties contacted by PJT Partners executed a non-disclosure agreement, none of these prospective lenders expressed serious interest in providing postpetition financing to the Company. As a result, PJT Partners was unable to secure a commitment to provide financing from any party other than the Pre-Petition ABL Lenders and the Pre-Petition Term Lenders.

21. Extensive negotiations over the terms and structure of the DIP Facilities took place over the last month with each party represented by experienced advisors, with such negotiations continuing into the days leading up to the Petition Date. These negotiations with the Pre-Petition ABL Agent and Pre-Petition Term Lender Group were in good faith and at arm's length. The Debtors' management team was intimately involved throughout this process. Ultimately, the Debtors' management, advisors (including myself) and Boards of Directors

concluded that the proposals from the Pre-Petition Term Lender Group and the Pre-Petition ABL Lenders were in the best interests of the Debtors and their stake-holders.

22. As set forth in detail in the DIP Motion, the Debtors were able to obtain an agreement in principle from (i) the Pre-Petition ABL Lenders to provide a senior secured asset-based revolving credit facility in a principal amount not to exceed \$130 million (the “ABL DIP Facility”) and (ii) the Pre-Petition Term Lender Group to provide a senior secured new money multiple draw term loan facility in the principal amount of \$35 million (the “Term DIP Facility”, and together with the ABL DIP Facility, the “DIP Facilities”). In addition to providing the Company with necessary liquidity, the DIP Facilities avoid the need for a lengthy, costly and challenging priming dispute. The DIP Facilities also require that the Debtors satisfy certain milestones for progress in the Chapter 11 Cases, and provide for adequate protection to holders of the Company’s secured indebtedness in exchange for their consent to the use of their collateral, including Cash Collateral.

**THE TERMS OF THE DIP FINANCING ARE FAIR
AND REASONABLE AND SHOULD BE APPROVED**

23. Based on my experience, my discussions with alternative sources of postpetition financing and my specific involvement in the negotiation of the DIP Facilities, I believe that the process undertaken by the Debtors was appropriate and produced the most favorable financing available to the Debtors under the circumstances. Moreover, in my opinion, it is essential that the Debtors have committed postpetition financing at the outset of these Chapter 11 Cases to retain the confidence of the Debtors’ customers, employees, vendors and unions as the Debtors continue to explore their restructuring alternatives.

24. ***First***, as discussed above, the negotiations with the Pre-Petition Lenders were at arm’s length and in good faith. The Company’s management team and legal and

financial advisors were actively involved throughout the process. Over the course of significant back and forth between the parties, both the DIP Lenders and the Company agreed to accommodations that allowed both sides to become more comfortable with the financing.

25. ***Second***, I believe that the DIP Facilities are the best financing available to the Debtors under the circumstances. In my opinion, based on my experience in the current DIP financing market, the pricing, fees, interest rates and other terms and conditions of the ABL DIP Facility are reasonable and are generally consistent with those contained in the Pre-Petition ABL Facility. In addition, in my view, the covenants and restrictions included in the ABL DIP Facility are reasonable and are not designed to make the Debtors disproportionately susceptible to a breach of such terms. Finally, I believe the condition that certain proceeds and collections of the ABL Priority Collateral repay the Pre-Petition ABL Loans until such obligations are paid in full is justified because the Debtors would not have been able to secure the ABL DIP Facility without this feature. Following extensive arm's length negotiations in which the Debtors sought removal of such feature, it was evident that it was a necessary inducement to obtain the ABL DIP Facility and secure the use of Cash Collateral.

26. With respect to the Term DIP Facility, the Pre-Petition Term Lender Group had significant leverage in these negotiations. The pricing, fees, interest rates and other terms and conditions of the Term DIP Facility are the best available to the Company, particularly given the absence of any practical alternative source of postpetition financing, and as a result, I believe such terms are fair and reasonable under the circumstances. Given the Debtors' capital structure and current projections, the challenging situation in the aluminum industry, the Pre-Petition Term Lenders' refusal to consent to a priming loan, and the lack of available junior

financing, I believe that no more favorably priced DIP financing available would be offered to the Debtors.

27. **Third**, and finally, the DIP Facilities provide the Debtors with the necessary liquidity to continue the operation of their businesses during the estimated course of these Chapter 11 Cases.

THE NEED FOR INTERIM RELIEF

28. The Debtors seek approval of the proposed DIP Facilities on an interim basis. Obtaining interim approval on the first day of these Chapter 11 Cases will allow the Company to communicate to its employees, vendors, regulators and customers, as well as potential bidders for the Debtors' assets, that the Debtors are entering chapter 11 on a strong financial footing and will continue operating without interruption.

29. Given the Debtors' current projections and their relative lack of unencumbered assets, immediate access to the DIP Facilities and Cash Collateral is necessary for continued operations, including to fund wages, salaries and benefits of the Debtors' employees, procure necessary goods and services (and maintain trade terms with the Debtors' vendors), finance the costs of these Chapter 11 Cases and meet certain other working capital needs. Based on these conditions, I believe that the Debtors would suffer immediate and irreparable harm to the value of their estates if the DIP Facilities are not approved.

30. Based on the foregoing and the facts and circumstances of these Chapter 11 Cases, I believe that the proposed DIP Facilities are the best financing that is currently available to the Debtors.

[Signature page follows]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
foregoing is true and correct to the best of my knowledge and belief.

Dated: February 8, 2016

/s/ James H. Baird

James H. Baird

Exhibit E

Budget Summary

