

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

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

Debtors.

Chapter 11

Case No. 16-10083-399

(Jointly Administered)

Hearing Date & Time:
July 14, 2016 at 10:00 a.m.
(prevailing Central Time)

Hearing Location:
St. Louis Courtroom 5 North

**NOTICE OF HEARING ON DEBTORS' MOTION
FOR AN (I) AN ORDER ESTABLISHING BIDDING
PROCEDURES FOR THE SALE OF THE UPSTREAM
BUSINESS AND GRANTING RELATED RELIEF AND (II) AN
ORDER APPROVING THE SALE OF THE UPSTREAM BUSINESS**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on **July 14, 2016 at 10:00 a.m. (prevailing Central Time)** before the Honorable Barry S. Schermer in Bankruptcy Courtroom 5 North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

WARNING: Any response or objection to this motion must be filed with this court by July 7, 2016 at 5:00 p.m. A copy shall be promptly served upon the undersigned. Failure to file a timely response may result in the Court granting the relief requested prior to the hearing date.

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Dated: June 13, 2016
St. Louis, Missouri

Respectfully submitted,

/s/ Christopher J. Lawhorn

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

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

Debtors.

Case No. 16-10083-399

Chapter 11

Jointly Administered

Hearing Date & Time:
July 14, 2016 at 10:00 a.m.
(prevailing Central Time)

Objection Deadline:
July 7, 2016 at 5:00 p.m.
(prevailing Central Time)

Hearing Location:
St. Louis Courtroom 5 North

**DEBTORS' MOTION FOR (I) AN ORDER
ESTABLISHING BIDDING PROCEDURES FOR THE SALE OF
THE UPSTREAM BUSINESS AND GRANTING RELATED RELIEF AND
(II) AN ORDER APPROVING THE SALE OF THE UPSTREAM BUSINESS**

Noranda Aluminum, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a "Debtor" and, collectively, the "Debtors" or the "Company"), by and through their undersigned counsel, hereby submit this motion (the "Motion") pursuant to sections 105, 363, 364, 365 and 503 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for (A) an order (the "Bidding Procedures Order"),¹ (i) approving the Debtors' proposed auction and bidding procedures (the "Bidding Procedures"), in substantially the form attached hereto as Exhibit A, to be employed in

¹ A copy of the proposed Bidding Procedures Order will be made available on the Debtors' case website at <https://cases.primeclerk.com/noranda> (the "Case Website") in advance of the hearing on the Motion.

connection with the proposed sale(s) (the “Sale(s)”) of all, or substantially all, of the assets comprising the Debtors’ primary aluminum production business (the “Upstream Business”) operated by Noranda Aluminum, Inc., Noranda Bauxite Ltd. and Noranda Alumina LLC (the “Subject Assets”) or one or more categories of the Subject Assets (each a “Lot” and collectively, the “Lots”), which Lots are identified in an exhibit to the Bidding Procedures, (ii) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including the form and manner of notice of proposed cure amounts (the “Cure Notice”); (iii) approving the form and manner of notice of the Sale(s), the notice of assumption and assignment of executory contracts and unexpired leases, and the other notices described herein; (iv) scheduling (a) a hearing (the “Stalking Horse Hearing”), on expedited notice, to approve the Debtors’ selection of one or more stalking horse bidders (each a “Stalking Horse Bidder”), if any, and the provision of Bid Protections (as defined below) to such Stalking Horse Bidder, if necessary; (b) an auction (the “Auction”) if the Debtors receive two or more timely and acceptable Qualified Bids (as defined below) and (c) a hearing (the “Sale Hearing”) to consider approval of the Sale(s) of the Upstream Business; and (v) granting related relief and (B) an order (the “Sale Order”), in a form to be posted to the Case Website, (i) authorizing the Sale(s) of the Subject Assets or one or more Lots free and clear of liens, claims, interests, and encumbrances (collectively, the “Interests”) to the bidder(s) with the highest or otherwise best bid(s) in accordance with the Bidding Procedures (each, a “Successful Bidder”); (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale; and (iii) granting related relief.² In support of the Motion, the Debtors respectfully represent as follows:

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures.

Jurisdiction and Venue

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). Venue of this proceeding and this Motion is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are Bankruptcy Code sections 105, 363, 364, 365 and 503 and Bankruptcy Rules 2002, 6004, 6006 and 9014.

Background

3. On February 8, 2016 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned cases (collectively, the "Chapter 11 Cases"). The Debtors have continued in possession of their respective properties and to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. On the Petition Date, this Court entered an order consolidating the Chapter 11 Cases for procedural purposes only. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases. On February 19, 2016, the United States Trustee, Region 13 (the "U.S. Trustee"), appointed the statutory committee of unsecured creditors (the "Committee").

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, are set forth in detail in the *Declaration of Dale W. Boyles in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") [Docket No. 5] filed on the Petition Date and is incorporated herein by reference.

6. As further described in the First Day Declaration, 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 by means of chapter 11 cases. In response, the Debtors' advisors began discussions with the agent (the "Pre-Petition ABL Agent") under the Debtors' pre-petition asset-based revolving credit facility and the largest lenders (the "Pre-Petition Term Lender Group") under the Debtors' pre-petition term loan facility (the "Pre-Petition Term Loan Facility") regarding the Debtors' financial condition and liquidity issues and to explore potential restructuring scenarios. The negotiations between the Debtors and the Pre-Petition ABL Agent and Pre-Petition Term Lender Group resulted in two debtor-in-possession financing facilities, an asset-based revolving credit facility and a new money term loan facility (together, the "DIP Facilities"). On March 11, 2016, the Court entered an order approving the Debtors' motion to approve the DIP Facilities and use of cash collateral on a final basis (the "Final DIP Order") [Docket No. 392]. The DIP Facilities, as well as consent to the use of cash collateral by the requisite prepetition secured parties, has provided the Debtors with sufficient liquidity to facilitate their restructuring and sale efforts.

7. The Final DIP Order and the DIP Facilities contain certain case milestones (the "Milestones"), including the commencement of a comprehensive sale process for Debtors' flat rolled products business owned and operated by Norandal USA, Inc. (the "Downstream Business") pursuant to section 363(b) of the Bankruptcy Code (the "Downstream Business Sale Process"). On March 21, 2016, the Court entered an order approving bidding procedures with respect to the sale of the Downstream Business [Docket No. 471]. The hearing to approve the sale of the Downstream Business is currently scheduled for July 14, 2016.

8. As amended, the Milestones also required the Debtors to deliver, on or before May 20, 2016, a five-year business plan relating to their Upstream Business (the "Business Plan"). *See* Final DIP Order at 57. On April 8, 2016, the Debtors delivered the Business Plan to

their DIP lenders. This was followed by an amended business plan on May 19, 2016, which satisfied the Debtors' obligations under such milestone.

9. In addition, the Debtors were required, on or before May 29, 2016, to file a chapter 11 plan relating to their Upstream Business or file a motion to establish bid procedures for the sale of such business under section 363 of the Bankruptcy Code. This deadline has since been extended to June 13, 2016. The Debtors believe, in consultation with their lenders, consultants and other parties-in-interest, that launching a sale process for the Upstream Business will maximize value for these estates and is therefore both a valid exercise of the Debtors' business judgment and consistent with their fiduciary duties to their stakeholders.

10. The Debtors seek to run a sale process that (i) is open to all potential bidders, including current participants in the Debtors' capital structure, parties previously involved in the Downstream Sale Process and other potential third party purchasers, (ii) contemplates the sale of all or substantially all of the Subject Assets or one or more Lots (or any combination thereof) comprising the Upstream Business assets and (iii) protects the best interests of the Debtors' estates and creditors. The Sale(s) of the Subject Assets are intended to relieve the estates of substantial obligations relating to such assets, reduce the estates' liabilities through the assumption and assignment of the relevant executory contracts and/or unexpired leases and avoid the further deterioration in the value of the Subject Assets—all through the prompt sale thereof. Moreover, the Sale(s) should provide the estates with the liquidity necessary to wind down the remaining estates in a responsible fashion.

11. In sum, the Debtors, in consultation with their advisors, believe that pursuing a Sale at this time for the Upstream Business is the course of action most likely to maximize value.

Indeed, the approach described herein facilitates the launch of the sale process in accordance with the Milestones without the delay attendant to first negotiating a stalking horse agreement.³

12. Accordingly, by this Motion, the Debtors seek authority to implement a sale process as outlined in the Bidding Procedures for the Upstream Business so as to efficiently market and solicit offers for the Subject Assets. Pursuant to this Motion, the Debtors request that the Court enter the proposed Bidding Procedures Order, which approves the Bidding Procedures, the Assumption and Assignment Procedures (as defined below) and the various notices described herein or attached hereto. In addition, the Bidding Procedures set forth the timetable for conducting the Auction and having a Sale Hearing. Upon conclusion of the Auction and selection of the highest or otherwise best bid(s), the Debtors will request the Court to enter the proposed Sale Order authorizing and approving the Sale free and clear of Interests. At the Sale Hearing, the Debtors will also seek approval pursuant to Bankruptcy Code section 365 of the assumption and assignment of the relevant executory contracts and/or unexpired leases to the Successful Bidder(s) for the applicable Subject Assets.

Relief Requested

13. By this Motion, the Debtors respectfully request, pursuant to Bankruptcy Code sections 105, 363, 364, 365 and 503 and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, the entry of (A) an order (i) establishing bidding procedures for the Sale(s) of the Subject Assets; (ii) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases (the “Assumption and Assignment Procedures”); (iv) approving the form and manner of sale, cure and other related notices; and (v) scheduling the Stalking Horse Hearing (if necessary), Auction and Sale Hearing; and (B) an order(s) (i) approving the

³ As discussed below, the Debtors reserve their right to select a Stalking Horse Bidder under appropriate circumstances in accordance with the Bidding Procedures.

Sale(s) of the Subject Assets free and clear of all claims, liens and encumbrances; (ii) approving the assumption and assignment of the relevant executory contracts and unexpired leases to the Successful Bidder(s); and (iii) granting related relief.

The Proposed Sale of the Subject Assets

A. Proposed Timeline for the Sale.

14. The Debtors propose the following timeline for the Sale:⁴

September 15, 2016 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline
September 20, 2016 at 5:00 p.m. (prevailing Central Time)	Sale Objection Deadline
September 22, 2016 at 10:00 a.m. (prevailing Eastern Time)	Auction
Subject to the Court's availability, September 27, 2016 at [] (prevailing Central Time)	Sale Hearing

The Debtors submit that this proposed timeline is reasonable, will foster robust participation in the sale process, is consistent with local practice and custom and will not prejudice any parties in interest.

B. Bidding Procedures.

15. The Bidding Procedures are designed to maximize value for the Debtors' estates, while ensuring an orderly and efficient sale process. The Bidding Procedures describe, among other things, (i) the procedures for interested parties to access due diligence materials, submit bids, and become qualified as a Stalking Horse Bidder or to participate in the Auction; (ii) the time, place, and procedures of any Auction; (iii) the selection and approval of any ultimately successful bidders; and (iv) the deadlines with respect to the foregoing. The Debtors believe,

⁴ In accordance with the Bidding Procedures, the Debtors, in the exercise of their business judgment, have reserved the right to postpone to a later date these sale-related dates to achieve the maximum value for the Subject Assets.

with the support of their secured creditors, that the Bidding Procedures provide for a sale process that will maximize the value of their estates and encourage robust participation in the bid process from potential bidders.

16. While all interested bidders should read the Bidding Procedures in their entirety, the following describes their salient terms:⁵

<p>Assets to Be Sold (p. 1)</p>	<p>All, or substantially all, of the assets comprising the Debtors’ primary aluminum production business owned and operated by Noranda Aluminum, Inc., Noranda Bauxite Ltd. and Noranda Alumina LLC or one or more categories of the Subject Assets identified as “Lots” in Exhibit 1 to the Bidding Procedures.</p>
<p>Access to Diligence Materials (pp. 2-3)</p>	<p>To receive access to due diligence materials and to participate in the bidding process, an interested party must submit to the Debtors or already be bound by (i) an executed confidentiality agreement in form and substance satisfactory to the Debtors (which, for the avoidance of doubt, may be substantially in the form attached as Exhibit 2 to the Bidding Procedures), (ii) evidence demonstrating the party’s financial ability to consummate a sale transaction for all or substantially all of the Subject Assets or one or more (or any combination thereof) of the Lots (each, a “<u>Sale Transaction</u>”) and (iii) a statement that such party has a bona fide interest in purchasing all or substantially all of the Subject Assets or one or more of the Lots.</p> <p>A party who either (1) in the Debtors’ reasonable discretion satisfies the requirements set forth in the immediately preceding sentence for receiving access to diligence materials or (2) is a DIP Credit Party or a Pre-Petition Credit Party (collectively, the “<u>Credit Parties</u>”), in either case, to the extent such party is subject to confidentiality restrictions reasonably acceptable to the Debtors, shall be a “<u>Diligence Party</u>.” As promptly as practicable after the Debtors determine that a party is a Diligence Party, the Debtors will deliver to the Diligence Party access to the Debtors’ confidential electronic data room. The Debtors will afford any Diligence Party the time and opportunity to conduct reasonable due diligence before the Bid Deadline. Notwithstanding the foregoing, the Debtors reserve the right to withhold any diligence materials that the Debtors determine are sensitive or otherwise not appropriate for disclosure to a Diligence Party who the Debtors determine, in consultation with the Consultation Parties, is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor</p>

⁵ The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures. In the event of any inconsistencies between the Bidding Procedures and the description herein, the Bidding Procedures shall govern.

	<p>their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Diligence Party; <i>provided, however</i>, that contemporaneously with the Debtors providing access to any Diligence Party of any offering memoranda or management presentations or materials, the Debtors will post such memoranda, presentations and/or materials on websites for the DIP Credit Parties, Pre-Petition Credit Parties and the Committee, and any of such DIP Credit Parties, Pre-Petition Credit Parties, and the Committee may access such memoranda, presentations or materials subject to the confidentiality provisions in the applicable credit agreements or other confidentiality provisions reasonably acceptable to the Debtors; <i>provided, further</i> that such memoranda, presentations and/or materials shall only be shared on a confidential basis with the Committee and the holders of the outstanding obligations under the applicable credit agreements (notwithstanding anything in the applicable credit agreements to the contrary) and their respective counsel and other advisors in a confidential relationship with them.</p>
<p>Qualification of Bidders and Qualified Bids (pp. 3-6)</p>	<p>To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “<u>Bid</u>”) for all or substantially all of the Subject Assets or one or more of the Lots, and each party submitting such a Bid (each, a “<u>Bidder</u>”), must satisfy each of the conditions set forth below, as determined by the Debtors after consultation with the Bid Consultation Parties. A Bid will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions:</p> <ul style="list-style-type: none"> (a) <u>Good Faith Deposit</u>: Each Bid must be accompanied by a deposit (a “<u>Good Faith Deposit</u>”) submitted by wire transfer of immediately available funds to an interest-bearing escrow account to be identified and established by the Debtors. Each Good Faith Deposit must equal the amount of ten percent (10%) of the purchase price contained in the Modified Purchase Agreement (as defined below) or such other amount as the Debtors determine, in consultation with the Consultation Parties or Bid Consultation Parties, as applicable; <i>provided, however</i>, that any party submitting a Bid that includes a credit bid for a substantial portion of the purchase price pursuant to section 363(k) of the Bankruptcy Code shall not be required to submit a Good Faith Deposit. The Debtors, in their discretion, may accept a letter of credit in lieu of a cash deposit. (b) <u>Same or Better Terms</u>: To the extent a Stalking Horse Bidder is selected for all or substantially all of the Subject Assets or one or more of the Lots and approved by the Bankruptcy Court, each subsequent Bid must be on terms that, in the Debtors’ business judgment, in consultation with the Bid Consultation Parties, are the same or better than the terms of

	<p>the Stalking Horse Agreement.</p> <p>(c) <u>Executed Agreement</u>: Each Bid must be based on the Purchase Agreement and must include executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate a Sale Transaction (the "<u>Modified Purchase Agreement</u>"). A Bid shall also include a copy of the Purchase Agreement marked against the Modified Purchase Agreement to show all changes requested by the Bidder (including those related to purchase price).</p> <p>(d) <u>Designation of Assigned Contracts and Leases, Payment of Cure Amounts</u>: A Bid must identify those executory contracts and unexpired leases of the Debtors that the Bidder wishes to have assumed and assigned to it at closing and provide for the payment of all cure amounts payable with respect to such contracts and leases under the Bankruptcy Code; <i>provided</i> that the Modified Purchase Agreement may allow for the Bidder to identify additional contracts prior to the closing or at such other date as agreed by the Debtors.</p> <p>(e) <u>Corporate Authority</u>: A Bid must include written evidence reasonably acceptable to the Debtors, in consultation with the Consultation Parties, demonstrating appropriate corporate authorization to consummate the proposed Sale Transaction, <i>provided</i> that, if the Bidder is an entity specially formed for the purpose of effectuating the Sale Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors, in consultation with the Consultation Parties, of the approval of the Sale Transaction by the equity holder(s) of such Bidder.</p> <p>(f) <u>Disclosure of Identity of Bidder</u>: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Subject Assets or otherwise participating in connection with such Bid (including any equity holder or other financial backer if the Bidder is an entity specifically formed for the purpose of effectuating the Sale Transaction), and the complete terms of any such participation, including any binding agreements, arrangements, or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid.</p> <p>(g) <u>Pension Obligations</u>: A Bid must state whether or not the Bidder intends to assume sponsorship of all or any part of, or any of the potential liabilities associated with the Noranda</p>
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	<p>Aluminum Group Retirement Plan, and/or the Noranda Alumina LLC Hourly Pension Plan, and/or the Retirement Plan for Hourly Rated Employees of Noranda Aluminum Inc. and/or any other pension or benefit plans (collectively, the “<u>Pension Obligations</u>”).</p> <p>(h) <u>Proof of Financial Ability to Perform</u>: A Bid must include written evidence that the Debtors reasonably conclude, in consultation with their advisors and the Bid Consultation Parties, demonstrates that the Bidder has the necessary financial ability to (i) close the Sale Transaction and (ii) provide adequate assurance of future performance under all contracts to be assumed and assigned in such Sale Transaction. Such information must include, <i>inter alia</i>, the following:</p> <ol style="list-style-type: none">(1) contact names and numbers for verification of financing sources;(2) evidence of the Bidder’s internal resources and proof of unconditional debt funding commitments from a recognized financial institution and, if applicable, equity commitments in an aggregate amount equal to the cash portion of such Bid (including, if applicable, the Bidder’s payment of cure amounts) or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in such amount, in each case, as is needed to close the Sale Transaction;(3) the Bidder’s current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors, in consultation with the Bid Consultation Parties;(4) a description of the Bidder’s pro forma capital structure; and(5) any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors, in consultation with the Bid Consultation Parties, demonstrating that such Bidder has the ability to close the Sale Transaction. <p>(i) <u>Regulatory and Third Party Approvals</u>: A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Sale Transaction, if any, and the time period within which the Bidder expects to receive such regulatory and third-party approvals (and in the case that</p>
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	<p>receipt of any such regulatory or third-party approval is expected to take more than thirty (30) days following execution and delivery of the Modified Purchase Agreement, those actions the Bidder will take to ensure receipt of such approval(s) as promptly as possible).</p> <p>(j) <u>Contingencies</u>: Each Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence.</p> <p>(k) <u>Irrevocable</u>: Each Bid must expressly provide that (1) the Bidder is prepared to consummate the transaction set forth in the Modified Purchase Agreement promptly following entry of the Sale Order(s) and satisfaction of the closing conditions (if any) set forth in the Modified Purchase Agreement, and (2) the offer reflected in such Bid shall remain open and irrevocable until the conclusion of the Auction, provided that if such Bid is accepted as the Successful Bid or the Backup Bid, such Bid shall continue to remain open and irrevocable as provided under “Closing the Auction; Successful Bidder” and “Backup Bidder” below.</p> <p>(l) <u>Bid Deadline</u>: Each Bid must be received by each of the following parties, in writing, on or before September 15, 2016 at 5:00 p.m. (prevailing Eastern Time) or such later date as may be designated by the Debtors in consultation with the Consultation Parties (the “<u>Bid Deadline</u>”): (1) the Debtors, Noranda Aluminum Inc., 801 Crescent Drive, Suite 600, Franklin, Tennessee 37067; Attn: Dale W. Boyles, CFO (dale.boyles@noralinc.com); Gail Lehman, General Counsel (gail.lehman@noralinc.com) and Robert Caruso, CRO (rcaruso@alvarezandmarsal.com); (2) 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), Diane Meyers (dmeyers@paulweiss.com) and Sarah Harnett (sharnett@paulweiss.com) and Carmody MacDonald P.C., 120 S. Central Avenue, Suite 1800, St. Louis, Missouri 63105, Attention: Christopher J. Lawhorn (cjl@carmodymacdonald.com); (3) investment banker for the Debtors, PJT Partners LP, 280 Park Avenue, 20th Floor, New York, NY 10017, Attn: James H. Baird (baird@pjtpartners.com) and Kerry Greer (greer@pjtpartners.com); (4) counsel for the ABL DIP Agent, Parker Hudson Rainer & Dobbs LLP, 303 Peachtree St. NE, Suite 3600, Atlanta, Georgia 30308, Attention: C.</p>
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Edward Dobbs (edobbs@phrd.com) and Lewis Rice LLC, 600 Washington Ave., Suite 2500, St. Louis, Missouri 63101, Attention: Larry E. Parres (lparres@lewisrice.com); (5) counsel for the 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) and Seth J. Kleinman (seth.kleinman@kayesholer.com) and Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101, Attn: Mark V. Bossi (mbossi@thompsoncoburn.com); (6) 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); (7) counsel for the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Jeffrey D. Prol (JProl@Lowenstein.com) and Spencer Fane LLP, 1000 Walnut, Suite 1400, Kansas City, MO 64106-2140, Attn: Lisa A. Epps (lepps@spencerfane.com); (8) financial advisor for the Committee, Houlihan Lokey, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, Attn: Bradley Jordan (bjordan@hlhz.com); and (9) to the Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Suite 340, Washington, DC 20005, Attn: Michael Baird (baird.michael@pbgc.gov), but only if such Bid includes the assumption of any liabilities associated with the Pension Obligations.

A Bid received from a Bidder on or before the Bid Deadline that meets the requirements set forth above shall constitute a “Qualified Bid” for (a) all or substantially all of the Subject Assets and/or (b) specifically identified Lots, or combinations of Lots, and such Bidder shall constitute a “Qualified Bidder” for such Subject Assets and/or Lots.

<p>Credit Bidding (p. 9-10)</p>	<p>Notwithstanding anything else contained in the Bidding Procedures, the Credit Parties shall have the right, subject in all respects to the Bankruptcy Code and other applicable law, to credit bid all or any portion of the aggregate amount of their applicable outstanding secured obligations pursuant to section 363(k) of the Bankruptcy Code, the DIP Order or other applicable law, and any such credit bid shall be deemed a Qualified Bid subject to the requirements set forth above under the heading “Auction Qualification Process,” as applicable. Nothing in the Bidding Procedures shall relieve a DIP Credit Party or Pre-Petition Credit Party from its obligations under the Intercreditor Agreement.</p>
<p>Option to Select Stalking Horse with Bid Protections (pp. 7-8)</p>	<p>Subject to the provisions set forth in the Bidding Procedures and in consultation with the Consultation Parties, the Debtors reserve the right, at any time before August 8, 2016 (or such later date as the Debtors determine in their reasonable discretion in consultation with the Consultation Parties), to enter into one or more purchase agreement(s) (each a “<u>Stalking Horse Agreement</u>”), subject to higher or otherwise better offers at the Auction, with any Qualified Bidder that submits a Qualified Bid (the “<u>Stalking Horse Bidder</u>”) acceptable to the Debtors, in consultation with the Consultation Parties, to establish a minimum Qualified Bid for all or substantially all of the Subject Assets or for any applicable Lot at the Auction. The Stalking Horse Agreement may contain certain customary terms and conditions, including expense reimbursement and a break-up fee in favor of the Stalking Horse Bidder (the “<u>Bid Protections</u>”) in amounts to be determined by the Debtors in consultation with the Consultation Parties. To the extent the Debtors enter into any Stalking Horse Agreement(s), the Debtors shall seek expedited approval of their entry into such agreement and any Bid Protections included therein together with the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder, on no less than seven (7) days’ notice (the “<u>Stalking Horse Hearing</u>”). The Debtors shall serve notice of the Stalking Horse Agreement and the Stalking Horse Hearing on all parties on the Debtors’ Rule 2002 Notice List and as otherwise required by the Bidding Procedures Order (each, a “<u>Stalking Horse Notice</u>”). Each Stalking Horse Notice will include (i) the identity of the proposed Stalking Horse Bidder, (ii) a summary of the key terms of the Stalking Horse Agreement specifying, among other things, the Subject Assets proposed to be acquired, the amount and type consideration to be offered, and any other material terms, (iii) a summary of the type and amount of Bid Protections, if any, proposed to be afforded to the Stalking Horse Bidder, and (iv) a copy of the Stalking Horse Agreement. At least five (5) days prior to the Auction, the Debtors shall distribute copies of the Stalking Horse Agreement(s) to each of the other Qualified Bidders. Notwithstanding anything in the Bidding Procedures or in the Bidding Procedures Order to the contrary, all parties in interest with standing, including, but not limited to, the Committee (subject to the terms of the DIP Order with respect to any credit bid by a DIP Credit Party or a Pre-Petition Credit Party), shall have the</p>

	<p>right, at any time before the start of the Stalking Horse Hearing, to object to any of the terms set forth in the Stalking Horse Agreement, including, but not limited to, the designation of a Stalking Horse Bidder, the identity of the Stalking Horse Bidder, the provision of Bid Protections to such Stalking Horse Bidder and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder, the Subject Assets proposed to be acquired, the amount and type consideration to be offered, and any other material terms.</p>
<p>Auction (pp. 8-9)</p>	<p>If two or more Qualified Bids for all or substantially all of the Subject Assets or any Lot are received by the Bid Deadline, the Debtors will conduct the Auction to determine the highest or otherwise best Qualified Bid. Only Qualified Bidders may participate in the Auction. If only one Qualified Bid is received with respect to all or a portion of the Subject Assets or any Lot, the Debtors may, after consultation with the Consultation Parties, designate such Qualified Bid as a Successful Bid(s) and not conduct the Auction.</p> <p>The Auction shall take place on September 22, 2016 at 10:00 a.m. (prevailing Eastern Time) at the offices of counsel for the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019, or such other place and time as the Debtors shall notify all Qualified Bidders and the Consultation Parties. The Auction shall be conducted according to the following procedures:</p> <p>Only the following parties shall be entitled to attend the Auction (such attendance to be in person): (i) the Debtors, (ii) the Consultation Parties, (iii) the Stalking Horse Bidder(s) (if any), (iv) any other Qualified Bidders, (v) any other party as the Debtors, in consultation with the Consultation Parties, may determine to include in their discretion, (vi) the representatives of, and advisors to, the United Steelworkers, and/or (vii) the representatives and advisors of the parties identified in clauses (i)-(v) above. Only Qualified Bidders will be entitled to make any Overbids (as defined below) at the Auction.</p> <p>The Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed. Other than as expressly set forth herein, the Debtors (in consultation with the Consultation Parties or, to the extent provided herein, the Bid Consultation Parties) may conduct the Auction in the manner they determine will result in the highest or otherwise best offer for any of the Subject Assets. The Debtors shall use their reasonable efforts to provide, at least one (1) business day prior to commencement of the Auction, the Consultation Parties and each Qualified Bidder participating in the Auction with a copy of the Modified Purchase Agreement associated with the highest or otherwise best Qualified Bid with respect to all or substantially all of the Subject Assets or any Lot(s) for which such Qualified Bidder is bidding, as determined by the Debtors in consultation with the Bid Consultation Parties (such highest or otherwise best Qualified Bid for such assets, the “<u>Auction Baseline Bid</u>”). In the event that the Debtors enter into</p>

	<p>a Stalking Horse Agreement with respect to some or all of the Subject Assets or any Lot and such Stalking Horse Agreement is approved by the Bankruptcy Court, such Stalking Horse Agreement shall be the Auction Baseline Bid with respect to such Subject Assets. At the start of the Auction, the Debtors shall describe the material terms of the Auction Baseline Bid and each Qualified Bidder participating in the Auction must confirm that (a) it has not engaged in any collusion with respect to the bidding or sale of any of the Subject Assets, (b) it has reviewed, understands, and accepts the Bidding Procedures, (c) it has consented to the core jurisdiction of the Bankruptcy Court (as described more fully below), and (d) its Qualified Bid is a good faith <i>bona fide</i> offer that it intends to consummate if selected as the Successful Bidder.</p>
<p>Terms and Announcement of Overbids (pp. 10-11)</p>	<p>An “<u>Overbid</u>” is any bid made at the Auction, in accordance with the requirements set forth in the Bidding Procedures, subsequent to the Debtors’ announcement of the respective Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:</p> <p>(a) <u>Minimum Overbid Increments</u>: The initial Overbid, if any, shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the Auction Baseline Bid by an incremental amount that is not less than the sum of (x) \$100,000 (the “<u>Minimum Overbid Increment</u>”) plus (y) in the event that the Debtors have entered into a Stalking Horse Agreement with respect to certain Subject Assets or Lots and such Stalking Horse Agreement has been approved by the Bankruptcy Court, the aggregate amount of any Bid Protections under such Stalking Horse Agreement, and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid Increment. The Debtors reserve the right, in consultation with the Bid Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction. Additional consideration in excess of the amount set forth in the respective Auction Baseline Bid may include (i) cash and/or noncash consideration, <i>provided, however</i>, that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment in consultation with the Bid Consultation Parties, and (ii) in the case of a Bid by the DIP Credit Parties or the Pre-Petition Credit Parties, a credit bid of up to the full amount of the such secured creditors’ applicable outstanding secured obligations, subject to the Committee’s rights and limitations with respect to such credit bid as set forth in the DIP Order, including</p>

paragraph 14(e) thereof.

- (b) Other Overbid Conditions: Except as modified as permitted in the Bidding Procedures, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Purchase Agreement or Modified Purchase Agreement, as the case may be, in connection therewith. For the avoidance of doubt, any Overbid shall be irrevocable and shall remain open and binding on the Bidder in accordance with these Bidding Procedures and the conditions for a Qualified Bid.

At the Debtors' discretion, to the extent not previously provided (which shall be determined by the Debtors in consultation with the Bid Consultation Parties), a Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors), as the Debtors, in their reasonable business judgment in consultation with the Bid Consultation Parties, may request, demonstrating such Bidder's ability to consummate the Sale Transaction proposed by such Overbid.

Announcement and Consideration of Overbids.

- (a) Announcement of Overbids: A Bidder submitting an Overbid at the Auction shall announce at the Auction the material terms of such Overbid, including the total amount and type of consideration offered in such Overbid.
- (b) Consideration of Overbids: The Debtors reserve the right, in their reasonable business judgment in consultation with the Consultation Parties or Bid Consultation Parties, as applicable, to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment in consultation with the Bid Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient debt and/or equity funding commitments, to consummate the

	<p>proposed Sale Transaction at the prevailing Overbid amount; <i>provided</i> that, to the extent the Debtors determine to request that any Qualified Bidder increase the amount of their Good Faith Deposit, the Debtors first shall consult with the Bid Consultation Parties before making such request.</p>
<p>Closing the Auction; Successful Bidder (p. 12)</p>	<p>The Auction shall continue until there is one Qualified Bid for the Subject Assets (or a combination of Qualified Bids or for one or more of the Lots), that the Debtors determine in their reasonable business judgment, in consultation with the Bid Consultation Parties, is the highest or otherwise best Qualified Bid at the Auction with respect thereto (each such Bid, the “<u>Successful Bid</u>,” and the Bidder submitting such Successful Bid, the “<u>Successful Bidder</u>”). In making this decision, the Debtors shall consider the Bid Assessment Criteria.</p> <p>The Auction shall close when the Successful Bidder(s) submits fully executed sale and transaction documents, as applicable, memorializing the terms of the Successful Bid(s).</p> <p>Promptly following the Debtors’ selection of the Successful Bid(s) and the conclusion of the Auction, the Debtors shall announce the Successful Bid(s) and Successful Bidder(s) and shall file with the Bankruptcy Court notice of the Successful Bid(s) and Successful Bidder(s). The Debtors’ ability to consummate the transactions proposed by a Successful Bidder(s) shall be subject to approval by the Bankruptcy Court. For the avoidance of doubt, a Consultation Party’s participation in the Auction shall not waive such party’s right to object to the transactions proposed by the Successful Bidder(s).</p> <p>The Debtors shall not consider any Bids submitted after the conclusion of the Auction. The Successful Bidder(s) shall be required to keep the Successful Bid(s) open and irrevocable until the closing of the transactions contemplated thereby.</p>
<p>Closing with Alternative Backup Bidders (pp. 12-13)</p>	<p>Notwithstanding anything in the Bidding Procedures to the contrary, the Qualified Bid for the Subject Assets and or applicable Lot(s) that the Debtors determine in their reasonable business judgment, in consultation with the Bid Consultation Parties, is the next highest or otherwise best Qualified Bid(s) at the Auction after the Successful Bid(s), will be designated as the “<u>Backup Bid</u>” and the Bidder submitting such Backup Bid, the “<u>Backup Bidder</u>.” The Backup Bidder shall be required to keep the Backup Bid open and irrevocable until the earlier of 5:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the date of entry of the Sale Order (the “<u>Outside Backup Date</u>”) or the closing of the transaction with the Successful Bidder.</p> <p>Following entry of the Sale Order, if the Successful Bidder fails to consummate the Successful Bid within sixty (60) days or such other period provided under the Purchase Agreement or Modified Purchase Agreement, as</p>

	<p>applicable, the Debtors may, in consultation with the Bid Consultation Parties, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case of a breach or failure to perform on the part of the Successful Bidder, the defaulting Successful Bidder's deposit shall be forfeited to the Debtors. The Debtors specifically reserve the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures.</p>
<p>Modification of Bidding and Auction Procedures (p. 11)</p>	<p>The Debtors (in consultation with the Consultation Parties or Bid Consultation Parties, as applicable), in the exercise of their fiduciary duties for the purpose of maximizing value for their estates from the sale process, may modify the Bidding Procedures and implement additional procedural rules for conducting the Auction. Specifically, among other things, the Debtors, in consultation with the Bid Consultation Parties, may determine to select more than one Successful Bid and more than one Successful Bidder (and/or more than one Backup Bid and more than one Backup Bidder).</p>

17. The Debtors will permit existing interested parties and any new prospective purchaser to perform reasonable due diligence with respect to the Subject Assets and will assist them with such efforts.

C. Reservation of Rights Regarding Potential Stalking Horse Bidder and Form of Purchase Agreement.

18. As discussed above, the Debtors have determined, in a reasonable exercise of their business judgment, that seeking the relief requested herein and commencing a sale process without entering into a Stalking Horse Agreement (as defined below) is warranted and necessary. The Debtors, in accordance with the Bidding Procedures, and in consultation with the Consultation Parties, may enter into a purchase agreement with a Stalking Horse Bidder acceptable to the Debtors (the "Stalking Horse Agreement") at any time before August 8, 2016 (or such later date as the Debtors determine in their reasonable discretion in consultation with the

Consultation Parties) with respect to all or substantially all of the Subject Assets or one or more of the Lots to establish a minimum Qualified Bid for such Subject Assets at, and subject to higher or otherwise better offers during, the Auction.

19. To facilitate a competitive, value-maximizing Sale, the Debtors are requesting authority, in the exercise of their business judgment and in accordance with the Bidding Procedures, to offer a Stalking Horse Bidder: (i) a break-up fee (the “Break-Up Fee”); (ii) reimbursement of the Stalking Horse Bidder’s reasonable fees and expenses up to an agreed upon limitation (the “Expense Reimbursement”); and/or (iii) initial overbid protection (the “Minimum Overbid Increment” and, together with the Break-Up Fee and the Expense Reimbursement, the “Bid Protections”); *provided* that such Bid Protections shall be subject to paragraph 23 hereof and the Bidding Procedures.

20. In lieu of a Stalking Horse Agreement at this time, the Debtors are preparing a form of asset purchase agreement, which the Debtors intend to file on the docket prior to the hearing to approve the Bidding Procedures Order, and shall also make such asset purchase agreement available on the Case Website. As set forth in the Bidding Procedures, each Bid must be based on the Purchase Agreement and must include a markup showing any requested changes to the form of Purchase Agreement.

D. The Notices.

21. Under Bankruptcy Rule 2002(a) and (c), the Debtors must notify their creditors of the proposed Sale of the Subject Assets, including disclosure of the time and place of the Auction and the Sale Hearing, the terms and conditions of the Sale, the Bidding Procedures and the deadline for filing any objections thereto. Accordingly, the Debtors have served a copy of this Motion in the manner set forth in paragraph 62 below.

22. The Debtors also propose, within three (3) Business Days after the entry of the Bidding Procedures Order, or as soon thereafter as practicable (the “Mailing Date”), to serve a copy of the Sale Notice (as defined below), the Bidding Procedures Order, and the Bidding Procedures by first-class mail, postage prepaid, or by email, where available, upon (a) all entities known to have expressed a *bona fide* interest in purchasing any of the Subject Assets since the Petition Date and such other potential purchasers identified by the Consultation Parties prior to the Mailing Date; (b) all entities known by the Debtors to have asserted any lien, claim or encumbrance in or upon any of the Subject Assets; (c) all federal, state and local environmental, regulatory or taxing authorities or recording offices, including governmental authorities in Jamaica, which have a reasonably known interest in the relief requested by the Motion; (d) the Office of the United States Trustee; (e) the U.S. Securities and Exchange Commission; (f) the Internal Revenue Service; and (g) the Core Parties and any Non-ECF Parties (as those terms are defined in the Case Management Order).

23. In addition, on the Mailing Date, or as soon thereafter as practicable, the Debtors (or their agents) will serve by first-class mail, postage prepaid, the notice of the Sale, substantially in the form attached to the proposed Bidding Procedures Order (the “Sale Notice”), upon all other known creditors of the Debtors and all counterparties to the Debtors’ executory contracts and unexpired leases.

24. Notice by mail to all parties-in-interest and all parties potentially interested in purchasing the Subject Assets or participating in the Auction is impracticable. As a result, the Debtors have determined that it is in the best interest of their estates to also provide notice by publication. Accordingly, on the Mailing Date or as soon as practicable thereafter, the Debtors will cause the Sale Notice to be published on one occasion, in *The Wall Street Journal*, National

Edition. In addition, the Debtors (i) respectfully request the authority, but not the direction, to publish the Sale Notice in additional publications as the Debtors deem appropriate and (ii) will cause the Sale Notice to be posted on their case information website for the Chapter 11 Cases, <https://cases.primeclerk.com/noranda>.

25. To the extent the Debtors enter into a Stalking Horse Agreement, the Debtors shall seek expedited approval of their entry into such agreement, any Bid Protections included therein and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder, on no less than seven (7) days' notice. The Debtors shall serve a Stalking Horse Notice on the Core Parties and any Non-ECF Parties (as those terms are defined in the Case Management Order) and shall use reasonable efforts to inform potential purchasers of the Subject Assets. Each Stalking Horse Notice will include (i) the identity of the proposed Stalking Horse Bidder, (ii) a summary of the key terms of the Stalking Horse Agreement, specifying, among other things, the Subject Assets proposed to be acquired, the amount and type of consideration to be offered and any other materials terms, (iii) a summary of the type and amount of Bid Protections, if any, proposed to be afforded to the Stalking Horse Bidder, and (iv) a copy of the Stalking Horse Agreement.

E. Assumption and Assignment of the Executory Contracts and Unexpired Leases.

26. In accordance with the proposed Bidding Procedures Order, within five (5) business days after the entry of the Bidding Procedures Order or as soon thereafter as is practicable (the "Assumption and Assignment Service Date"), the Debtors will file with this Court and serve on each counterparty to an executory contract or unexpired lease related to the Subject Assets (the "Designated Contracts") the Cure Notice, substantially in the form attached to the Bidding Procedures Order, which Cure Notice shall: (i) state the cure amounts, if any, that the Debtors believe are necessary to assume such contracts or leases pursuant to Bankruptcy

Code section 365 (the “Cure Amount”); (ii) notify the non-Debtor counterparty that such party’s contract(s) or lease(s) may be assumed and assigned to the Successful Bidder of one or more of the Subject Assets at the conclusion of the Auction; (iii) state the date of the Sale Hearing and that objections to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by the Debtors; and (iv) state the deadline by which the non-Debtor counterparty shall file an objection to the Cure Amount(s) or to the assumption and assignment of the applicable contract(s) and/or lease(s); *provided, however*, that the inclusion of a contract, lease or agreement on the Cure Notice shall not constitute an admission that such contract, lease or agreement is an executory contract or unexpired lease or that it will, in fact, be assumed and assigned in connection with the Sale of the Subject Assets. If no Cure Amount is listed, the Debtors believe that no amount to cure defaults under the respective executory contract or unexpired lease is owed by them thereunder. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts, leases and agreements listed on the Cure Notice. Copies of Cure Notices shall promptly be provided to the Committee.

27. The Debtors propose that any objection to the Cure Amount or the assumption and assignment of the applicable contract(s) and/or lease(s) (the “Cure Objection”) must be filed with the Court, and served so as to be received by: (a) 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), Diane Meyers (dmeyers@paulweiss.com) and Sarah Harnett (sharnett@paulweiss.com) and Carmody MacDonald P.C., 120 S. Central Avenue, Suite 1800, St. Louis, Missouri 63105, Attention: Christopher J. Lawhorn (cjl@carmodymacdonald.com); (b) counsel for the 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 (lparres@lewisrice.com); (c) counsel for the 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) and Seth J. Kleinman (seth.kleinman@kayescholer.com) and Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101, Attn: Mark V. Bossi (mbossi@thompsoncoburn.com); (d) 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); (e) counsel for the Official Committee of Unsecured Creditors (the “Committee”), Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Jeffrey D. Prol (JProl@Lowenstein.com) and Spencer Fane LLP, 1000 Walnut, Suite 1400, Kansas City, MO 64106-2140, Attn: Lisa A. Epps (lepps@spencerfane.com); and (f) the Office of the United States Trustee, 111 S. 10th St., Suite 6.353, St. Louis, Missouri 63102 (collectively, the “Notice Parties”), no later than 5:00 p.m. (prevailing Central time) fourteen (14) days following the date the Cure Notice is filed with the Court and served on the applicable counterparty to such executory contract or unexpired lease (the “Cure Objection Deadline”). Any Cure Objection must also state (i) the basis for such objection and (ii) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with appropriate documentation in support thereof).

28. Any objection solely to the Cure Amount(s) may not prevent or delay the Debtors' assumption and assignment of assumed and assigned contract(s) or lease(s). If a party objects solely to Cure Amount(s), the Debtors may, with the consent of the relevant Successful Bidder, hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract(s) or lease(s), the Debtors can, without further delay, assume and assign such contract(s) or lease(s). Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

29. If no objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

30. Although the Debtors intend to make a good-faith effort to identify all executory contracts or unexpired leases that may be assumed and assigned in connection with the Sale, the Debtors may discover certain contracts inadvertently omitted from the Designated Contracts list or the Successful Bidder(s) may identify other executory contracts or unexpired leases that they desire to assume and assign in connection with the Sale. Accordingly the Debtors reserve the right to (i) supplement the list of Designated Contracts in accordance with the definitive agreement for the Sale or (ii) remove a Designated Contract from the list of contracts ultimately selected as a Designated Contract that a Successful Bidder proposes to be assumed and assigned in connection with the Sale. In the event that the Debtors exercise any of the rights reserved above, the Debtors will promptly (i) file with this Court a notice setting forth each such addition or removal (the "Supplemental Designated Contracts List") and (ii) serve a supplemental notice

of assumption and assignment (a "Supplemental Notice of Assumption and Assignment") by electronic transmission, hand delivery, or overnight mail on the counterparty (and its attorney, if known) to each impacted Designated Contract at the last known address available to the Debtors. A copy of the Supplemental Designated Contract List shall be promptly provided to the Committee. To the extent that a previously omitted Designated Contract is added to the Designated Contracts list (an "Additional Designated Contract"), the Debtors shall, in the Supplemental Designated Contracts List and each Supplemental Notice of Assumption and Assignment: (i) state the Cure Amount for such Additional Designated Contract; (ii) notify the non-Debtor counterparty that such party's contract(s) or lease(s) may be assumed and assigned to the Successful Bidder of the relevant Subject Assets at the conclusion of the Auction; (iii) state the date of the Sale Hearing and that objections to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by the Debtors or the Court; and (iv) state the deadline by which the non-Debtor counterparty shall file an objection to the Cure Amount(s) or to the assumption and assignment of the applicable contract(s) and/or lease(s). Any objection to the Cure Amount or the assumption and assignment of Additional Designated Contract must be filed with the Court and served on the Notice Parties so as to be received no later than fourteen (14) days from the date that the Supplemental Notice of Assumption and Assignment is served on the Non-Debtor Counterparty (or such other date authorized by the Court as shall be specified in the Supplemental Notice of Assumption and Assignment) (the "Additional Cure Objection Deadline"). Other than meeting the Additional Cure Objection Deadline, Cure Objections relating to a Supplemental Notice of Assumption and Assignment shall meet all requirements of a Cure Objection set forth herein.

31. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by a Qualified Bidder under the applicable executory contract(s) or unexpired lease(s), then such non-Debtor counterparty shall file a written objection with the Court and serve on the Notice Parties and the applicable Qualified Bidder(s) so that such objection is received on or before **12:00 p.m. (prevailing Central Time)** one (1) day prior to the Sale Hearing.

32. To the extent that any non-Debtor counterparty does not timely file and serve an objection as set forth above, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped and enjoined from asserting any additional Cure Amount(s) under the assumed and assigned executory contract(s) or unexpired lease(s); (iii) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contract(s) or unexpired lease(s) to the Successful Bidder(s), and (iv) barred from objecting to adequate assurance of future performance by the Successful Bidder(s).

Supporting Authority

A. The Bidding Procedures Are Fair and Reasonable.

33. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. In accordance with the Bidding Procedures, the Debtors seek to market the Subject Assets through a competitive bidding process to maximize value and avoid the further deterioration of their business through a prompt sale of the Subject Assets. Consequently, the Debtors believe that good cause exists to expose their assets to sale at auction and to approve the procedures proposed herein. An auction conducted substantially in accordance with the Bidding Procedures will enable the Debtors to obtain the highest and best offers for the Subject Assets.

34. The Debtors believe that the Bidding Procedures are appropriate under Bankruptcy Code sections 105 and 363 to ensure that the bidding and sale process is conducted fairly and will yield the highest value for their estates and creditors. The Bidding Procedures are designed to facilitate a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids, including bids for all or a portion of the Subject Assets (or any Lot) as provided in the Bidding Procedures. The Bidding Procedures also provide potential bidders with sufficient notice and opportunity to acquire information necessary to submit a timely and informed bid. Thus, the Debtors and all parties in interest can be assured that the consideration for the Subject Assets will be fair and reasonable. At the same time, the Bidding Procedures provide the Debtors with the opportunity to consider all competing offers and to select, in their reasonable business judgment, and after consultation with the Bid Consultation Parties, the highest or otherwise best offer, individually or in combination with other bids, for the Subject Assets.

35. The Debtors believe that the Bidding Procedures provide an appropriate framework for the sale of the Upstream Business that will enable the Debtors to review, analyze and compare, in a relatively uniform fashion, all offers received to determine which offer (or offers) is the highest or otherwise best and in the best interests of the Debtors' estates and creditors. The Debtors believe that the proposed deadlines for noticing, marketing and selling the Subject Assets offer potential bidders ample opportunity to prepare and submit Qualified Bids for such assets.

36. Accordingly, the Debtors believe the Court should approve the Bidding Procedures. Similar procedures have been routinely approved. *See, e.g., In re Jump Oil Company, Inc.*, 13-41130 (KAS) (Bankr. E.D. Mo. April 30, 2013) [Docket No. 136]; *In re*

Bakers Footwear Grp. Inc., No. 12-49658 (CER) (Bankr. E.D. Mo. Nov. 1, 2012) [Docket No. 633]; *In re ContinentalAFA Dispensing Co.*, No. 08-45921 (KAS) (Bankr. E.D. Mo. Sept. 19, 2008) [Docket No. 152]; *In re the Great Atl. & Pac. Tea Co., Inc.*, Case No. 15-23007 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Delia's, Inc.*, Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015); *In re Synagro Techs., Inc.*, Case No. 13-11041 (BLS) (Bankr. D. Del. May 13, 2013); *In re ICL Holding Co., Inc. (f/k/a LCI Holding Co., Inc.)*, Case No. 12-13319 (KG) (Bankr. D. Del. Jan. 25, 2013).

B. Approval of the Sale is Warranted Under Bankruptcy Code Section 363(b).

37. Compelling business justifications exist for the proposed Sale. First, the Debtors do not have sufficient liquidity or access to financing to fund their operations beyond [the existing maturity date] contained in the DIP Facilities, let alone through a protracted and contentious chapter 11 case. As a result, and cognizant of their current monthly cash outlay, the deteriorating aluminum pricing market, continued use of cash collateral, the depletion of their assets through normal operations, and their fiduciary obligation to maximize distributable value for all creditors, the Debtors believe that a sale of all or substantially all of the Upstream Business offers the best available alternative at this juncture. Accordingly, the Debtors have determined that they should pursue the Sale of the Subject Assets.

38. Bankruptcy Code section 363(b) provides that “[t]he [debtor-in-possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Following the decision in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986), courts have used the “sound business purpose” standard for approving sales pursuant to section 363. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must

find from the evidence presented before him or her a good business reason to grant such application); *In re Trilogy Dev. Co., LLC*, 2010 Bankr. LEXIS 5636, at *3-4 (Bankr. W.D. Mo. 2010); *In re Channel One Comm., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is “a good business reason”).

39. 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.*, 107 F.3d at 566 n.16 (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. 855, 881 (Bankr. W.D. Mo. 2003) (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. 312, 317 (B.A.P. 9th Cir. 1992)); *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"); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that "[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors' best economic interests, based on the Debtors' best business judgment in those circumstances.").

40. The "sound business purpose" test requires a debtor to establish: "(1) a sound business purpose exists; (2) the sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the purchaser has acted in good faith." *In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. at 176); accord *In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990).

41. As discussed above, the Debtors have concluded that, in light of the distressed nature of the Debtors' business, operational challenges they face and the adverse aluminum pricing market, the Sale of the Subject Assets represents the best alternative currently available to them. Commencing the Sale process now will ensure that the Debtors can complete a transaction prior to the maturity date of the DIP Facilities. Consequently, the proposed Sale of the Subject Assets in accordance with the Bidding Procedures satisfies the "sound business purpose" test for the sale of assets outside the ordinary course of business under Bankruptcy Code section 363(b).

42. The currently proposed Bidding Procedures will establish parameters pursuant to which the value of the Subject Assets may be fully tested at the Auction and ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtors receive the greatest possible consideration for the Subject Assets because they will ensure a competitive and fair

bidding process that will encourage participation by financially capable bidders who demonstrate the ability to close such a transaction. Indeed, the Debtors have put limited (if any) constraints on the ability of prospective purchasers to bid on the Subject Assets, and instead have encouraged bid flexibility by, *inter alia*, allowing the Debtors to consider all competing offers for some or all of the Lots and to select, in their reasonable business judgment, and after consultation with the Consultation Parties (as defined in the Bidding Procedures), the highest or otherwise best offer for the Subject Assets. In addition, the Modified Purchase Agreement will be the product of vigorous arms'-length, good faith negotiations between the relevant parties.

43. Accordingly, the Debtors submit that the Sale of the Subject Assets as contemplated herein and in the Bidding Procedures is in the best interests of the Debtors, their estates and creditors, and should be approved.

C. The Subject Assets Should be Sold Free and Clear of Claims, Liens and Encumbrances Under Bankruptcy Code Section 363(f).

44. The Debtors also submit that the Sale of the Subject Assets should be free and clear of any and all claims, liens and encumbrances under Bankruptcy Code section 363(f) (other than Assumed Liabilities and Permitted Encumbrances, each as defined in the Purchase Agreement). Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of third-party interests only if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interests; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Since section 363(f) is written in the disjunctive, any of the five conditions provides authority to sell free and clear of claims, liens and encumbrances. *See Gulf States Steel,*

285 B.R. 497, 506 (Bankr. N.D. Ala 2002); *In re Pacific Energy Resources Ltd., et al.*, Case No. 09-10785 (KJC) (Bankr. D. Del. Aug. 18, 2009); *In re Flying J Inc., et al.*, Case No. 08-1334 (MFW) (Bankr. D. Del. July 27, 2009); *In re Dundee Equity Corp.*, Case No. 89-10233, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992); *In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995).

45. The Debtors submit that each lien that is not an Assumed Liability or Permitted Encumbrance under the Purchase Agreement satisfies at least one of the five conditions of Bankruptcy Code section 363(f). To the extent an entity with liens on the Subject Assets does not consent to the proposed Sale, the Debtors believe that they will be able to demonstrate at the Sale Hearing satisfaction of the requirements of Bankruptcy Code section 363(f). Alternatively, the Debtors may sell the Subject Assets free and clear of any other interests under section 363(f)(5), because the liens on any Subject Assets sold will attach to the proceeds of such a sale and entities holding such interests could be compelled to accept a money satisfaction in legal or equitable proceedings. Accordingly, pursuant to Bankruptcy Code section 363, the Debtors may sell the Subject Assets free and clear of all liens, claims, and encumbrances.

46. Moreover, the Debtors have sent or will send the Sale Notice to any known purported lienholders (and will publish the Sale Notice in at least one national newspaper). If any lienholders do not object to the proposed Sale, then their consent should reasonably be presumed. Accordingly, the Debtors request that unless a party asserting a lien on any of the Subject Assets timely objects to this Motion, such party shall be deemed to have consented to any Sale approved at the Sale Hearing.

47. It is also appropriate to sell the Subject Assets free and clear of successor liability relating to the Debtors' businesses. Such limitations on successor liability ensure that the

Successful Bidder(s) is protected from any claims or lawsuits premised on the theory that the Successful Bidder(s) is a successor in interest to one or more of the Debtors. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes free and clear from successor liability relating to the debtor's business. *See e.g., Cibulka v. Trans World Airlines, Inc.*, 92 F. App'x 366, 368 (8th Cir. 2004) (citing *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program)); *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 (4th Cir. 1996) (affirming the sale of debtors' assets free and clear of certain taxes); *In re Ormet*, Case No. 13-10334, 2014 WL 3542133 (Bankr. D. Del. July 17, 2014) (permitting a sale free and clear of successor liability claims relating to an under-funded pension plan); *In re Insilco Techs., Inc.*, 351 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suite based on a successor liability theory); *see also In re General Motors Corp.*, 407 B.R. 463, 505-06 (Bankr. S.D.N.Y. 2009) (holding that "[T]he law in this Circuit and District is clear; the Court will permit GM's assets to pass to the purchaser free and clear of successor liability claims, and in that connection, will issue the requested findings and associated injunction"); *In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) ("[I]n *personam* claims, including any potential state successor or transferee liability claims against New Chrysler, as well as *in rem* interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction").

48. The purpose of a sale order purporting to authorize the transfer of assets free and clear of all claims, liens and encumbrances would be defeated if claimants could thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller's pre-sale conduct.

Moreover, without such assurances, potential bidders may choose not to participate in the Auction or, if they did, would submit reduced bid amounts. To that end, the Successful Bidder(s) should not be liable under any theory of successor liability relating to the Debtors' businesses, but should hold the Subject Assets free and clear.

D. A Successful Bidder Should be Entitled to the Protections of Bankruptcy Code Section 363(m).

49. Pursuant to Bankruptcy Code section 363(m), a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Trism, Inc.*, 328 F.3d 1003, 1008 (8th Cir. 2003) (“Section 363(m) protects a good faith purchaser and lists no other exceptions or any other qualifications to receive the protection of section 363(m).”); *Miami Ctr. Ltd. P’ship v. Bank of N.Y.*, 838 F.2d 1547, 1554 (11th Cir. 1988); *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, Case No. 03-51524, 2007 WL 1428477 (Bankr. D.N.J. May 11, 2007); *Abbotts Dairies of Penn.*, 788 F.2d at 147.

50. Any agreement consummating a Sale(s) of all or substantially all of the Subject Assets or one or more of the Lots comprising the Upstream Business will have been vetted by various parties-in-interest following a robust sales process and shall have been negotiated at arm’s-length by sophisticated parties, each represented by their own advisors. Accordingly, the Debtors request that the Sale Order (or Sale Orders) include a provision that the Successful Bidder (or Successful Bidders) for the Subject Assets is a “good faith” purchaser within the meaning of Bankruptcy Code section 363(m). The Debtors believe that providing any Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Subject Assets and closing of the same will occur promptly.

E. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Should be Approved under Bankruptcy Code Section 365.

51. To enhance the value of the Debtors' estates (by curtailing further administrative liability and eliminating substantial rejection claims), the Debtors request authority under Bankruptcy Code section 365 to assume and assign the executory contracts and/or unexpired leases associated with the Subject Assets to the relevant Successful Bidder. The Debtors further request that the Sale Order provide that the assigned executory contracts and/or unexpired leases will be transferred to, and remain in full force and effect for the benefit of, the Successful Bidder(s) notwithstanding any provisions in such assigned contracts and/or leases, including those described in Bankruptcy Code sections 365(b)(2), (f)(1) and (f)(3), that prohibit such assignments.

52. The Debtors may, subject to Court approval, assume and assign executory contracts and unexpired leases under Bankruptcy Code section 365. 11 U.S.C. § 365(a). Courts routinely approve motions to assume, assume and assign, or reject executory contracts or unexpired leases upon a showing that a debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *See, e.g., In re Noranda Aluminum, Inc.*, __ B.R. __, No. 16-10083-399, 2016 WL 1417923, at *2 (Bankr. E.D. Mo. Apr. 7, 2016) (internal citations omitted); *see also In re Food Barn Stores, Inc.*, 107 F.3d at 567 n.16; *L.R.S.C. Co. v. Rickel Home Ctrs., Inc. (In re Rickel Home Ctrs., Inc.)*, 209 F.3d 291, 298 (3d Cir. 2000); *Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re NII Holdings, Inc.*, Case No. 14-12611 (SCC) (Bankr. S.D.N.Y. Apr. 20, 2015); *In re Delia's, Inc.*, Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Dec. 24, 2014). The assumption and assignment of the executory contracts and/or unexpired

leases related to the Subject Assets is an integral component of the Sale, without which the Sale would not be a viable option.

53. Section 365(b)(1) of the Bankruptcy Code requires that, if there has been a default in a debtor's unexpired lease or executory contract, other than certain nonmonetary defaults as set forth in the statute, such unexpired lease or executory contract may not be assumed unless, at the time of the assumption, (i) such default is cured or there is adequate assurance that such default will be cured, (ii) compensation or adequate assurance of compensation is provided for any actual pecuniary loss resulting from such default and (iii) adequate assurance of future performance under the lease is provided. 11 U.S.C. § 365(b)(1)(A)-(C).

54. As set forth above, pursuant to the terms of the proposed Bidding Procedures Order, the Debtors will send the Cure Notice to all counterparties to the executory contracts and unexpired leases notifying such counterparties of the potential assumption by the Debtors and assignment to the relevant Successful Bidder(s) of such contract(s) and/or lease(s). The Cure Notice will also set forth the Cure Amount, if any, owing for each such contract(s) and/or lease(s) according to the Debtors' books and records.

55. Counterparties to such contract(s) and/or lease(s) will be given sufficient time (as set forth herein and in the proposed Bidding Procedures Order) to object to the proposed Cure Amounts, if any, set forth in the Cure Notice. If no objection is filed with regard to a particular Cure Amount, such Cure Amount shall be binding on the Debtors, the Successful Bidder(s) and the applicable non-Debtor counterparty. The payment of the Cure Amounts specified in the Cure Notice (or a different amount, either agreed to by the Debtors or resolved by the Court as a result of a timely-filed objection by the relevant non-Debtor counterparty) will be in full and final satisfaction of all obligations to cure defaults and compensate the counterparties for any

pecuniary losses under the applicable executory contract(s) and/or lease(s) pursuant to Bankruptcy Code section 365(b)(1), unless the Debtors determine, before the Sale Hearing, that a particular lease or contract is not truly executory, and does not need to be cured to transfer the relevant Subject Assets to the Successful Bidder(s).

56. Section 365(f)(2)(B) of the Bankruptcy Code states that a debtor may assign its unexpired leases and executory contracts if, *inter alia*, the assignee provides “adequate assurance of future performance.” 11 U.S.C. § 365(f)(2)(B). If necessary, the Successful Bidder(s) must submit, among other things, written evidence of the ability to provide adequate assurance of future performance under the applicable contracts or leases as set forth above and in the proposed Bidding Procedures Order. The affected non-Debtor counterparties will also be able to challenge the ability of the Successful Bidder(s) to provide adequate assurance as provided in the proposed Bidding Procedures Order.

57. Any assumption and assignment of an assigned contract(s) and/or lease(s) will be subject to all of the provisions of such contract(s) and/or lease(s), to the extent required by applicable law and in accordance with applicable provisions of the Bankruptcy Code. As set forth in the Bidding Procedures, the Successful Bidder will need to show that it is financially able and prepared to undertake all of the relevant obligations under the assigned contract(s) and/or lease(s). Moreover, the Debtors, together with the relevant Successful Bidder, will establish, as necessary, at the Sale Hearing, the requisite adequate assurance of future performance pursuant to Bankruptcy Code section 365 with respect to the potential assumption and assignment of the applicable assigned contract(s) and/or lease(s). Consequently, assumption and assignment of the assigned executory contract(s) and/or lease(s) in connection with the Sale of the Subject Assets is appropriate under the circumstances.

F. The Form, Manner and Extent of Notice of the Motion and the Proposed Sale are Appropriate and Adequate Under the Circumstances.

58. The Debtors will serve the Sale Notice and the Cure Notice in accordance with the proposed Bidding Procedures Order, and have served the Motion as set forth herein. The notice of the proposed Sale to be provided by the Debtors as set forth herein sufficiently describes the terms and conditions of the proposed Sale.

59. Several sections of the Bankruptcy Code and Bankruptcy Rules dictate the sufficiency of notice and adequacy of service. As discussed below, the content and manner of service of this Motion and the related notices satisfy all such requirements:

- a. Section 363 Notice – Bankruptcy Code section 363 provides that a trustee may sell property “after notice and hearing.” Under Section 102(1) of the Bankruptcy Code, the phrase “after notice and hearing” means “notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). As set forth above, creditors will be provided with notice of the salient details regarding the Sale Hearing. Accordingly, notice is sufficient under Bankruptcy Code section 363.
- b. Bankruptcy Rule 2002 – Bankruptcy Rule 2002 requires twenty-one (21) days’ notice of the proposed sale of property other than in the ordinary course of business. In addition, Bankruptcy Rule 2002 provides that notice of a sale shall “include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections.” Fed. R. Bankr. P. 2002. As set forth above, the notice of this Motion that has been and will be provided by the Debtors satisfies each of these requirements.
- c. Bankruptcy Rules 6004 and 6006 – Bankruptcy Rule 6004 requires that notice of sales of property out of the ordinary course of business comply with Bankruptcy Rule 2002. As set forth above, the Debtors have complied with Bankruptcy Rule 2002. Bankruptcy Rule 6006 requires notice of a motion to assume and assign an executory contract or unexpired lease to be served on the counterparty to such contract or lease, as well as on other parties in interest as the Court may direct. The Sale Notice and the Cure Notice have been or will be served on counterparties to the Assigned Contracts, thereby satisfying this requirement.

- d. Procedural Due Process – The notices of this Motion that are being provided as described herein, including the notice being provided by publication as set forth above, are “reasonably calculated” to apprise interested parties of the pendency of the matter and to afford them an opportunity to object. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Parties in interest have been and should be found to have been afforded adequate notice of this Motion, the Sale, the Bidding Procedures and the other relief requested herein.

60. The Debtors submit that the notice they have provided and intend to provide as outlined above with respect to the proposed Sale, the Bidding Procedures, the Bid Protections (if any), and the Cure Amounts, as applicable, is reasonable and appropriate and constitutes good and adequate notice of the sale of the Subject Assets and the procedures and proceedings related thereto and therefore should be approved by this Court.

G. The Stay of the Sale Order(s) Should be Waived.

61. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), an order authorizing the sale of property or the assignment of an unexpired lease is stayed for fourteen (14) days after the entry of an order unless the Court orders otherwise.

62. The Debtors request that this Court order that such stay is not applicable with respect to the sale of the Subject Assets and assignment and assumption of the related executory contracts and/or unexpired leases. To require the Debtors to effectively be liable under the applicable executory contracts and/or unexpired leases for an extra fourteen (14) days and to delay the closing and the resulting paydown of the Debtors’ secured obligations and related adequate protection obligations would burden the estates and require unnecessary expenditures of the Debtors’ limited resources. The Debtors note that similar requests to waive the stay imposed under Bankruptcy Rules 6004(h) and 6006(d) are routinely granted. *See, e.g., In re Bakers Footwear Grp. Inc.*, No. 12-49658 (CER) (Bankr. E.D. Mo. Nov. 1, 2012); *In re ContinentalAFA Dispensing Company*, No. 08-45921 (KAS) (Bankr. E.D. Mo. Nov. 12, 2008);

In re the Great Atlantic & Pacific Tea Company, Inc., Case No. 15-23007 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Delia's, Inc.*, Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015); *In re Midway Games Inc.*, Case No. 09-10465 (KG) (Bankr. D. Del. June 3, 2009); *In re Nortel Networks Inc., et al.*, Case No. 09-10138 (Bankr. D. Del. Mar. 3, 2009).

No Prior Request

63. No prior request for the relief sought herein has been requested from this Court or any other court.

Notice

64. The Debtors have provided notice of this Motion to (a) the Core Parties and (b) any Non-ECF Parties (as those terms are defined in the *Order Pursuant to Section 105(a) of the Bankruptcy Code, 28 U.S.C. § 1404, Bankruptcy Rule 1015(c) and Local Rule 9004(C) (I) Denying Transfer of Division and (II) Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 123]). All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and the proposed Bidding Procedures Order will also be made available on the Case Website. The proposed Bidding Procedures Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the proposed Bidding Procedures Order, the amended proposed Bidding Procedures Order or the Bidding Procedures will be made available on the Debtors' Case Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested in this Motion and grant the Debtors such other and further relief as this Court deems just and proper.

Dated: June 13, 2016
St. Louis, Missouri

Respectfully submitted,
CARMODY MACDONALD P.C.

/s/ Christopher J. Lawhorn

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing was filed with the Court via CM/ECF on this 13th day of June, 2016, and service shall be made by Prime Clerk to counsel of record and parties as required in the Case Management Order dated 2/12/2016 through CM/ECF or via first-class mail.

/s/ Christopher J. Lawhorn

Exhibit A

**NORANDA ALUMINUM, INC.
UPSTREAM BUSINESS BIDDING PROCEDURES¹**

Introduction

Noranda Aluminum, Inc. and certain of its affiliates and subsidiaries (collectively, the “Debtors”) are debtors and debtors in possession in chapter 11 cases (jointly administered under Case No. 16-10083-399) (the “Cases”) pending in the United States Bankruptcy Court for the Eastern District of Missouri (the “Bankruptcy Court”).

By the Sale Motion, the Debtors sought approval of, among other things, the procedures (the “Bidding Procedures”) by which they will solicit and select the highest or otherwise best offer(s) for the sale(s) of all, or substantially all, of the assets comprising the Debtors’ primary aluminum production business (the “Upstream Business”) owned and operated by Noranda Aluminum, Inc., Noranda Bauxite Ltd. and Noranda Alumina LLC (the “Subject Assets”) or one or more categories of the Subject Assets (each a “Lot” and collectively, the “Lots”), which Lots are identified in **Exhibit 1** hereto, either through a sale to one Successful Bidder (as defined below) or multiple sales to multiple Successful Bidders.² On [____], 2016, the Bankruptcy Court entered an order (the “Bidding Procedures Order”) which approved the Bidding Procedures set forth below. Prior to entry of the Bidding Procedures Order, the Debtors filed a form of asset purchase agreement for the sale of all or substantially all of the Subject Assets, along with one or more forms of asset purchase agreement(s) with modifications appropriate for the purchase of applicable Lot(s) (each such agreement, together with certain ancillary agreements related thereto, the “Purchase Agreement”), which has also been made available on the Debtors’ Case Website at <https://cases.primeclerk.com/noranda>.

Key Dates

These Bidding Procedures provide interested parties with the opportunity to complete diligence, to submit competing bids for all or substantially all of the Subject Assets or one or more (or any combination thereof) of the Lots, and to participate in an auction to be conducted by the Debtors (the “Auction”).

The key dates for the sale process are as follows:³

September 15, 2016 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline
September 22, 2016 at 10:00 a.m. (prevailing Eastern Time)	Auction, which will be held at Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas,

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Debtors’ Motion for (I) an Order Establishing Bidding Procedures for the Upstream Business and Granting Related Relief and (II) an Order Approving the Sale of the Upstream Business* (the “Sale Motion”).

² The Debtors reserve the right to further sub-divide the Lots.

³ Such dates are subject to change as provided herein.

	New York, NY 10019
Subject to the Court’s availability, September 27, 2016 at [] (prevailing Central Time)	Sale Hearing

Access to Debtors’ Diligence Materials

To receive access to due diligence materials and to participate in the bidding process, an interested party must submit to the Debtors or already be bound by (i) an executed confidentiality agreement in form and substance satisfactory to the Debtors (which, for the avoidance of doubt, may be substantially in the form attached hereto as **Exhibit 2**), (ii) evidence demonstrating the party’s financial ability to consummate a sale transaction for all or substantially all of the Subject Assets or one or more (or any combination thereof) of the Lots (each, a “Sale Transaction”) and (iii) a statement that such party has a bona fide interest in purchasing all or substantially all of the Subject Assets or one or more of the Lots.

A party who either (1) in the Debtors’ reasonable discretion satisfies the requirements set forth in the immediately preceding sentence for receiving access to diligence materials or (2) is a DIP Credit Party⁴ or a Pre-Petition Credit Party⁵ (collectively, the “Credit Parties”), in either case, to the extent such party is subject to confidentiality restrictions reasonably acceptable to the Debtors, shall be a “Diligence Party.” As promptly as practicable after the Debtors determine that a party is a Diligence Party, the Debtors will deliver to the Diligence Party access to the Debtors’ confidential electronic data room. The Debtors will afford any Diligence Party the time and opportunity to conduct reasonable due diligence before the Bid Deadline (as defined below). Notwithstanding the foregoing, the Debtors reserve the right to withhold any diligence materials that the Debtors determine are sensitive or otherwise not appropriate for disclosure to a Diligence Party who the Debtors determine, in consultation with the Consultation Parties, is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Diligence Party; *provided, however*, that contemporaneously with the Debtors providing access to any Diligence Party of any offering memoranda or management presentations or materials, the Debtors will post such memoranda, presentations and/or materials on websites for the DIP Credit Parties, Pre-Petition Credit Parties and the Committee, and any of such DIP Credit Parties, Pre-Petition Credit Parties, and the Committee may access such memoranda, presentations or materials subject to the confidentiality provisions in the applicable credit agreements or other confidentiality provisions reasonably acceptable to the Debtors; *provided, further* that such memoranda, presentations and/or materials shall only be shared on a confidential basis with the Committee and the holders of the outstanding obligations under the

⁴ As defined in the *Final Order Granting Debtors’ Motion 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, and (v) Grant Related Relief* [Docket No. 392] (the “DIP Order”).

⁵ As defined in the DIP Order.

applicable credit agreements (notwithstanding anything in the applicable credit agreements to the contrary) and their respective counsel and other advisors in a confidential relationship with them.

All due diligence requests must be directed to Kerry Greer of PJT Partners LP at Greer@pjtpartners.com.

Each Diligence Party and Qualified Bidder (as defined below) shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Bidder and its contemplated transaction. Failure by a Diligence Party to comply with requests for additional information and due diligence access may be a basis for the Debtors to determine, in consultation with the Consultation Parties or Bid Consultation Parties, as applicable (each as defined below), that such bidder is not a Qualified Bidder. The Debtors reserve the right, in their reasonable discretion, in consultation with the Consultation Parties or Bid Consultation Parties, as applicable, to permit a Diligence Party or Qualified Bidder to remedy any such failure to comply.

Indications of Interest

The Debtors reserve the right at any time to require Diligence Parties (other than the Credit Parties) to submit written indications of interest specifying, among other things, the Subject Assets or Lots to be purchased, the amount and type of consideration to be offered, and any other material terms. All such written indications of interest will be provided by the Debtors to the Consultation Parties on a confidential basis. A Diligence Party that fails to comply with any such request by the Debtors, in the Debtors' discretion and in consultation with the Consultation Parties or Bid Consultation Parties, as applicable, may not be provided further diligence access or be permitted to participate further in the auction process. The Debtors also reserve the right to exclude any Diligence Party (prior to its submission of a Qualified Bid) from continuing in the auction process if the Debtors determine, in consultation with the Bid Consultation Parties (as defined below), that the consideration proposed to be paid by such Diligence Party is insufficient.

Auction Qualification Process

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a "Bid") for all or substantially all of the Subject Assets or one or more of the Lots, and each party submitting such a Bid (each, a "Bidder"), must satisfy each of the conditions set forth below, as determined by the Debtors after consultation with the Bid Consultation Parties. A Bid will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions:

- (a) Good Faith Deposit: Each Bid must be accompanied by a deposit (a "Good Faith Deposit") submitted by wire transfer of immediately available funds to an interest-bearing escrow account to be identified and established by the Debtors. Each Good Faith Deposit must equal the amount of ten percent (10%) of the purchase price contained in the Modified Purchase Agreement (as defined below) or such other amount as the Debtors determine, in consultation with the Consultation Parties or Bid Consultation Parties, as applicable; *provided, however*, that any party submitting a Bid that includes a credit bid for a

substantial portion of the purchase price pursuant to section 363(k) of the Bankruptcy Code shall not be required to submit a Good Faith Deposit. The Debtors may, in their discretion, accept a letter of credit in lieu of a cash deposit.

- (b) Same or Better Terms: To the extent a Stalking Horse Bidder is selected for all or substantially all of the Subject Assets or one or more of the Lots and approved by the Bankruptcy Court, each subsequent Bid must be on terms that, in the Debtors' business judgment, in consultation with the Bid Consultation Parties, are the same or better than the terms of the Stalking Horse Agreement.
- (c) Executed Agreement: Each Bid must be based on the Purchase Agreement and must include executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate a Sale Transaction (the "Modified Purchase Agreement"). A Bid shall also include a copy of the Purchase Agreement marked against the Modified Purchase Agreement to show all changes requested by the Bidder (including those related to purchase price).
- (d) Designation of Assigned Contracts and Leases, Payment of Cure Amounts: A Bid must identify those executory contracts and unexpired leases of the Debtors that the Bidder wishes to have assumed and assigned to it at closing and provide for the payment of all cure amounts payable with respect to such contracts and leases under the Bankruptcy Code; *provided* that the Modified Purchase Agreement may allow for the Bidder to identify additional contracts prior to the closing or at such other date as agreed by the Debtors.
- (e) Corporate Authority: A Bid must include written evidence reasonably acceptable to the Debtors, in consultation with the Consultation Parties, demonstrating appropriate corporate authorization to consummate the proposed Sale Transaction, *provided* that, if the Bidder is an entity specially formed for the purpose of effectuating the Sale Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors, in consultation with the Consultation Parties, of the approval of the Sale Transaction by the equity holder(s) of such Bidder.
- (f) Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Subject Assets or otherwise participating in connection with such Bid (including any equity holder or other financial backer if the Bidder is an entity specifically formed for the purpose of effectuating the Sale Transaction), and the complete terms of any such participation, including any binding agreements, arrangements, or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid.
- (g) Pension Obligations: A Bid must state whether or not the Bidder intends to assume sponsorship of all or any part of, or any of the potential liabilities associated with the Noranda Aluminum Group Retirement Plan, and/or the

Noranda Alumina LLC Hourly Pension Plan, and/or the Retirement Plan for Hourly Rated Employees of Noranda Aluminum Inc. and/or any other pension or benefit plans (collectively, the “Pension Obligations”).

- (h) Proof of Financial Ability to Perform: A Bid must include written evidence that the Debtors reasonably conclude, in consultation with their advisors and the Bid Consultation Parties, demonstrates that the Bidder has the necessary financial ability to (i) close the Sale Transaction and (ii) provide adequate assurance of future performance under all contracts to be assumed and assigned in such Sale Transaction. Such information must include, *inter alia*, the following:
- (1) contact names and numbers for verification of financing sources;
 - (2) evidence of the Bidder’s internal resources and proof of unconditional debt funding commitments from a recognized financial institution and, if applicable, equity commitments in an aggregate amount equal to the cash portion of such Bid (including, if applicable, the Bidder’s payment of cure amounts) or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in such amount, in each case, as are needed to close the Sale Transaction;
 - (3) the Bidder’s current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors, in consultation with the Bid Consultation Parties;
 - (4) a description of the Bidder’s pro forma capital structure; and
 - (5) any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors, in consultation with the Bid Consultation Parties, demonstrating that such Bidder has the ability to close the Sale Transaction.
- (i) Regulatory and Third Party Approvals: A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Sale Transaction, if any, and the time period within which the Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty (30) days following execution and delivery of the Modified Purchase Agreement, those actions the Bidder will take to ensure receipt of such approval(s) as promptly as possible).
- (j) Contingencies: Each Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence.
- (k) Irrevocable: Each Bid must expressly provide that (1) the Bidder is prepared to consummate the transaction set forth in the Modified Purchase Agreement promptly following entry of the Sale Order(s) and satisfaction of the closing conditions (if any) set forth in the Modified Purchase Agreement, and (2) the offer reflected in such Bid shall remain open and irrevocable until the conclusion of the Auction, provided that if such Bid is accepted as the Successful Bid or the Backup

Bid (each as defined herein), such Bid shall continue to remain open and irrevocable as provided under “Closing the Auction; Successful Bidder” and “Backup Bidder” below.

- (1) Bid Deadline: Each Bid must be received by each of the following parties, in writing, on or before September 15, 2016, at 5:00 p.m. (prevailing Eastern Time) or such later date as may be designated by the Debtors in consultation with the Consultation Parties (the “Bid Deadline”): (1) the Debtors, Noranda Aluminum Inc., 801 Crescent Drive, Suite 600, Franklin, Tennessee 37067; Attn: Dale W. Boyles, CFO (dale.boyles@noralinc.com); Gail Lehman, General Counsel (gail.lehman@noralinc.com) and Robert Caruso, CRO (rcaruso@alvarezandmarsal.com); (2) 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), Diane Meyers (dmeyers@paulweiss.com) and Sarah Harnett (sharnett@paulweiss.com) and Carmody MacDonald P.C., 120 S. Central Avenue, Suite 1800, St. Louis, Missouri 63105, Attention: Christopher J. Lawhorn (cjl@carmodymacdonald.com); (3) investment banker for the Debtors, PJT Partners LP, 280 Park Avenue, 20th Floor, New York, NY 10017, Attn: James H. Baird (baird@pjtpartners.com) and Kerry Greer (greer@pjtpartners.com); (4) counsel for the 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 (lparres@lewisrice.com); (5) counsel for the 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) and Seth J. Kleinman (seth.kleinman@kayescholer.com) and Thompson Coburn LLP, One US Bank Plaza, St. Louis, MO 63101, Attn: Mark V. Bossi (mbossi@thompsoncoburn.com); (6) 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); (7) counsel for the Official Committee of Unsecured Creditors (the “Committee”), Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, Attn: Jeffrey D. Prol (JProl@Lowenstein.com) and Spencer Fane LLP, 1000 Walnut, Suite 1400, Kansas City, MO 64106-2140, Attn: Lisa A. Epps (lepps@spencerfane.com); (8) financial advisor for the Committee, Houlihan Lokey, Inc., 245 Park Avenue, 20th Floor, New York, NY 10167, Attn: Bradley Jordan (bjordan@hlhz.com); and (9) to the Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Suite 340, Washington, DC 20005, Attn: Michael Baird (baird.michael@pbgc.gov), but only if such Bid includes the assumption of any liabilities associated with the Pension Obligations.

A Bid received from a Bidder on or before the Bid Deadline that meets the requirements set forth above shall constitute a “Qualified Bid” for (a) all or substantially all of the Subject Assets and/or (b) specifically identified Lots, or combinations of Lots, and such Bidder shall constitute a “Qualified Bidder” for such Subject Assets and/or Lots. Notwithstanding anything else contained herein, the Credit Parties shall have the right by the Bid Deadline, subject in all respects to the Bankruptcy Code, other applicable law, and the right of the Committee to object as set forth in the DIP Order, to credit bid all or any portion of the aggregate amount of their applicable outstanding secured obligations pursuant to section 363(k) of the Bankruptcy Code, the DIP Order or other applicable law, and any such credit bid shall be subject to the requirements set forth above under the heading “Auction Qualification Process.” Nothing herein shall relieve a DIP Credit Party or Pre-Petition Credit Party from its obligations under the Intercreditor Agreement.⁶ Nothing herein shall waive or otherwise impede the Committee’s rights with respect to any such credit bid as set forth in the DIP Order, including paragraph 14(e) thereof.

To the extent a Qualified Bid provides for assumption of the Pension Obligations, the Debtors shall request that such Bidder provide forthwith to PBGC the financial information regarding such Bidder on a confidential basis so the PBGC can assess whether it has financial ability to assume the Pension Obligations, and the Debtors shall forward any such financial information on a confidential basis to the PBGC within two (2) business days of receipt.

Stalking Horse Bids

Subject to the provisions set forth herein and in consultation with the Consultation Parties, the Debtors reserve the right, at any time before August 8, 2016 (or such later date as the Debtors determine in their reasonable discretion in consultation with the Consultation Parties), to enter into one or more purchase agreement(s) (each a “Stalking Horse Agreement”), subject to higher or otherwise better offers at the Auction, with any Qualified Bidder that submits a Qualified Bid (the “Stalking Horse Bidder”) acceptable to the Debtors, in consultation with the Consultation Parties, to establish a minimum Qualified Bid for all or substantially all of the Subject Assets or for any applicable Lot at the Auction. The Stalking Horse Agreement may contain certain customary terms and conditions, including expense reimbursement and a break-up fee in favor of the Stalking Horse Bidder (the “Bid Protections”) in amounts to be determined by the Debtors in consultation with the Consultation Parties. To the extent the Debtors enter into any Stalking Horse Agreement(s), the Debtors shall seek expedited approval of their entry into such agreement and any Bid Protections included therein together with the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder, on no less than seven (7) days’ notice (the “Stalking Horse Hearing”). The Debtors shall serve notice of the Stalking Horse Agreement and the Stalking Horse Hearing on all parties on the Debtors’ Rule 2002 Notice List and as otherwise required by the Bidding Procedures Order (each, a “Stalking Horse Notice”). Each Stalking Horse Notice will include (i) the identity of the proposed Stalking Horse Bidder, (ii) a summary of the key terms of the Stalking Horse Agreement specifying, among other things, the Subject Assets proposed to be acquired, the amount and type consideration to be offered, and any other material terms, (iii) a summary of the type and amount

⁶ As defined in the DIP Order.

of Bid Protections, if any, proposed to be afforded to the Stalking Horse Bidder, and (iv) a copy of the Stalking Horse Agreement. At least five (5) days prior to the Auction, the Debtors shall distribute copies of the Stalking Horse Agreement(s) to each of the other Qualified Bidders. Notwithstanding anything herein or in the Bidding Procedures Order to the contrary, all parties in interest with standing, including, but not limited to, the Committee (subject to the terms of the DIP Order with respect to any credit bid by a DIP Credit Party or a Pre-Petition Credit Party), shall have the right, at any time before the start of the Stalking Horse Hearing, to object to any of the terms set forth in the Stalking Horse Agreement, including, but not limited to, the designation of a Stalking Horse Bidder, the identity of the Stalking Horse Bidder, the provision of Bid Protections to such Stalking Horse Bidder and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder, the Subject Assets proposed to be acquired, the amount and type consideration to be offered, and any other material terms.

Any Stalking Horse Agreement executed by the Debtors and approved by the Bankruptcy Court pursuant to the Stalking Horse Hearing and the transactions contemplated thereby will be deemed a Qualified Bid for all purposes, and any Stalking Horse Bidder party to a Stalking Horse Agreement executed by the Debtors will be deemed to be Qualified Bidder.

No party submitting a Bid shall be entitled to a break-up fee or expense reimbursement except for the Bid Protections granted to a Stalking Horse Bidder which have been approved by the Bankruptcy Court. **Any substantial contribution claims under section 503(b) of the Bankruptcy Code or otherwise by any Bidder are deemed waived in connection with submitting a Bid.**

Highest or Otherwise Best Bid

Whenever these Bidding Procedures refer to the highest or otherwise best Qualified Bid, such determination shall take into account any factors the Debtors, in consultation with the Bid Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to the estates and may include, but are not limited to, the following (i) the amount and nature of the consideration, including any Assumed Liabilities (as defined in the Purchase Agreement or Modified Purchase Agreement, as applicable), including, for the avoidance of doubt, the assumption of the Pension Obligations; (ii) the number, type and nature of any changes to the Purchase Agreement requested by each Qualified Bidder; (iii) the extent to which such modifications are likely to delay closing of the sale of the relevant Subject Assets and the cost to the Debtors of such modifications or delay; (iv) the likelihood of the Qualified Bidder being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof; (v) the net benefit to the Debtors' estates; and (vi) the proposed assumption of any liabilities associated with the Pension Obligations (collectively, the "Bid Assessment Criteria").

Auction

If two or more Qualified Bids for all or substantially all of the Subject Assets are received by the Bid Deadline, the Debtors will conduct the Auction to determine the highest or otherwise best Qualified Bid. Only Qualified Bidders may participate in the Auction. If only one Qualified Bid is received with respect to all or substantially all of the Subject Assets (or with

respect to any Lot), the Debtors may, after consultation with the Consultation Parties, designate such Qualified Bid as a Successful Bid(s) and not conduct the Auction.

Procedures for Auction

The Auction shall take place on September 22, 2016 at 10:00 a.m. (prevailing Eastern Time) at the offices of counsel for the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019, or such other place and time as the Debtors shall notify all Qualified Bidders and the Consultation Parties. The Auction shall be conducted according to the following procedures:

Only the following parties shall be entitled to attend the Auction (such attendance to be in person): (i) the Debtors, (ii) the Consultation Parties, (iii) the Stalking Horse Bidder(s) (if any), (iv) any other Qualified Bidders, (v) any other party as the Debtors, in consultation with the Consultation Parties, may determine to include in their discretion, (vi) the representatives of, and advisors to, the United Steelworkers, and/or (vii) the representatives and advisors of the parties identified in clauses (i)-(v) above. Only Qualified Bidders will be entitled to make any Overbids (as defined below) at the Auction.

The Debtors Shall Conduct the Auction.

The Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed. Other than as expressly set forth herein, the Debtors (in consultation with the Consultation Parties or, to the extent provided herein, the Bid Consultation Parties) may conduct the Auction in the manner they determine will result in the highest or otherwise best offer for any of the Subject Assets. The Debtors shall use their reasonable efforts to provide, at least one (1) business day prior to commencement of the Auction, the Consultation Parties and each Qualified Bidder participating in the Auction with a copy of the Modified Purchase Agreement associated with the highest or otherwise best Qualified Bid with respect to all or substantially all of the Subject Assets or any Lot(s), as applicable, for which such Qualified Bidder is bidding, as determined by the Debtors in consultation with the Bid Consultation Parties (such highest or otherwise best Qualified Bid for such assets, the “Auction Baseline Bid”). In the event that the Debtors enter into a Stalking Horse Agreement with respect to some or all of the Subject Assets or any Lot and such Stalking Horse Agreement is approved by the Bankruptcy Court, such Stalking Horse Agreement shall be the Auction Baseline Bid with respect to such Subject Assets. At the start of the Auction, the Debtors shall describe the material terms of the Auction Baseline Bid and each Qualified Bidder participating in the Auction must confirm that (a) it has not engaged in any collusion with respect to the bidding or sale of any of the Subject Assets described herein, (b) it has reviewed, understands, and accepts the Bidding Procedures, (c) it has consented to the core jurisdiction of the Bankruptcy Court (as described more fully below), and (d) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Credit Bidding by DIP Credit Parties and Pre-Petition Credit Parties.

Notwithstanding anything else contained herein, the DIP Credit Parties and the Pre-Petition Credit Parties shall have the right (subject in all respects to (i) the Bankruptcy Code, (ii) other applicable law, and (iii) the Committee’s rights with respect to any credit bid as set forth in the

DIP Order, including paragraph 14(e) thereof), to credit bid all or any portion of the aggregate amount of their applicable outstanding secured obligations at the Auction pursuant to section 363(k) of the Bankruptcy Code, the DIP Order or other applicable law, in accordance with the applicable provisions of the applicable DIP Loan Agreements or Pre-Petition Documents, including the Intercreditor Agreement (each as defined in the DIP Order). Nothing herein shall relieve a Credit Party from its obligations under the Intercreditor Agreement. Nothing herein shall waive or otherwise impede the Committee's rights with respect to any credit bid as set forth in the DIP Order, including paragraph 14(e) thereof.

Terms of Overbids.

An "Overbid" is any bid made at the Auction, in accordance with the requirements set forth herein, subsequent to the Debtors' announcement of the respective Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

- (a) Minimum Overbid Increments: The initial Overbid, if any, shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the Auction Baseline Bid by an incremental amount that is not less than the sum of (x) \$100,000 (the "Minimum Overbid Increment") plus (y) in the event that the Debtors have entered into a Stalking Horse Agreement with respect to certain Subject Assets or Lots and such Stalking Horse Agreement has been approved by the Bankruptcy Court, the aggregate amount of any Bid Protections under such Stalking Horse Agreement, and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid Increment. The Debtors reserve the right, in consultation with the Bid Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction. Additional consideration in excess of the amount set forth in the respective Auction Baseline Bid may include (i) cash and/or noncash consideration, *provided, however*, that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment in consultation with the Bid Consultation Parties, and (ii) in the case of a Bid by the DIP Credit Parties or the Pre-Petition Credit Parties, a credit bid of up to the full amount of the such secured creditors' applicable outstanding secured obligations, subject to the Committee's rights and limitation with respect to such credit bid as set forth in the DIP Order, including paragraph 14(e) thereof.
- (b) Other Overbid Conditions: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Purchase Agreement or Modified Purchase Agreement, as the case may be, in connection therewith. For the avoidance of doubt, any Overbid shall be irrevocable and shall remain open and binding on the Bidder in accordance with these Bidding Procedures and the conditions for a Qualified Bid.

At the Debtors' discretion, to the extent not previously provided (which shall be determined by the Debtors in consultation with the Bid Consultation Parties), a Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors), as the Debtors, in their reasonable business judgment in consultation with the Bid Consultation Parties, may request, demonstrating such Bidder's ability to consummate the Sale Transaction proposed by such Overbid.

Announcement and Consideration of Overbids.

- (a) Announcement of Overbids: A Bidder submitting an Overbid at the Auction shall announce at the Auction the material terms of such Overbid, including the total amount and type of consideration offered in such Overbid.
- (b) Consideration of Overbids: The Debtors reserve the right, in their reasonable business judgment in consultation with the Consultation Parties or Bid Consultation Parties, as applicable, to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment in consultation with the Bid Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount; *provided* that, to the extent the Debtors determine to request that any Qualified Bidder increase the amount of their Good Faith Deposit, the Debtors first shall consult with the Bid Consultation Parties before making such request.

Additional Procedures.

The Debtors (in consultation with the Consultation Parties or Bid Consultation Parties, as applicable), in the exercise of their fiduciary duties for the purpose of maximizing value for their estates from the sale process, may modify the Bidding Procedures and implement additional procedural rules for conducting the Auction. Specifically, among other things, the Debtors, in consultation with the Bid Consultation Parties, may determine to select more than one Successful Bid and more than one Successful Bidder (and/or more than one Backup Bid and more than one Backup Bidder).

Consent to Jurisdiction as Condition to Bidding.

All Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, the Cases, the Bidding Procedures, the Purchase Agreement, any Modified Purchase Agreement, the Auction, or the construction and enforcement of documents relating to any Sale Transaction and waived any right to a jury trial in connection with any disputes relating to the Debtors, the Cases, the Bidding Procedures, the Purchase Agreement, any

Modified Purchase Agreement, the Auction, or the construction and enforcement of documents relating to any Sale Transaction.

Sale Is As Is/Where Is.

Any of the Subject Assets sold pursuant to the Bidding Procedures shall be sold free and clear of all liens claims and encumbrances as permitted by section 363(f) of the Bankruptcy Code other than any Assumed Liabilities and conveyed at Closing in their then-present condition, **“AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED”**, except to the extent set forth in the definitive agreement for the Successful Bid, if applicable; *provided* that any such sale shall be subject to any Credit Party’s or other party in interest’s right to object to the extent otherwise set forth herein.

Closing the Auction; Successful Bidder.

The Auction shall continue until there is one Qualified Bid for substantially all of the Subject Assets (or a combination of Qualified Bids for one or more of the Lots), that the Debtors determine in their reasonable business judgment, in consultation with the Bid Consultation Parties, is the highest or otherwise best Qualified Bid at the Auction with respect thereto (each such Bid, the “Successful Bid,” and the Bidder submitting such Successful Bid, the “Successful Bidder”). In making this decision, the Debtors shall consider the Bid Assessment Criteria.

The Auction shall close when the Successful Bidder(s) submits fully executed sale and transaction documents, as applicable, memorializing the terms of the Successful Bid(s).

Promptly following the Debtors’ selection of the Successful Bid(s) and the conclusion of the Auction, the Debtors shall announce the Successful Bid(s) and Successful Bidder(s) and shall file with the Bankruptcy Court notice of the Successful Bid(s) and Successful Bidder(s). The Debtors’ ability to consummate the transactions proposed by a Successful Bidder(s) shall be subject to approval by the Bankruptcy Court. For the avoidance of doubt, a Consultation Party’s participation in the Auction shall not waive such party’s right to object to the transactions proposed by the Successful Bidder(s).

The Debtors shall not consider any Bids submitted after the conclusion of the Auction. The Successful Bidder(s) shall be required to keep the Successful Bid(s) open and irrevocable until the closing of the transactions contemplated thereby.

Backup Bidder.

Notwithstanding anything in the Bidding Procedures to the contrary, the Qualified Bid for the Subject Assets or an applicable Lot(s) that the Debtors determine in their reasonable business judgment, in consultation with the Bid Consultation Parties, is the next highest or otherwise best Qualified Bid(s) at the Auction after the Successful Bid(s), will be designated as the “Backup Bid” with respect thereto and the Bidder submitting such Backup Bid, the “Backup Bidder.” The Backup Bidder shall be required to keep the Backup Bid open and irrevocable until the earlier of 5:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the

date of entry of the Sale Order (the “Outside Backup Date”) or the closing of the transaction with the Successful Bidder (defined herein).

Following entry of the Sale Order, if the Successful Bidder fails to consummate the Successful Bid within sixty (60) days or such other period provided under the Purchase Agreement or Modified Purchase Agreement, as applicable, the Debtors may, in consultation with the Bid Consultation Parties, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case of a breach or failure to perform on the part of the Successful Bidder, the defaulting Successful Bidder’s deposit shall be forfeited to the Debtors. The Debtors specifically reserve the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures.

Return of Good Faith Deposits

The Good Faith Deposits of all Qualified Bidders shall be held in one or more non-interest bearing accounts by the Debtors, but shall not become property of the Debtors’ estates; *provided, however*, that the Good Faith Deposit of any Successful Bidder (including any Backup Bidder that becomes a Successful Bidder) may be forfeited to the Debtors or credited towards the purchase price set forth in the Successful Bid, in either case as provided in these Bidding Procedures. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than seven (7) days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder, if any, shall be returned to the Backup Bidder not later than seven (7) business days after (i) the closing of the transaction with the Successful Bidder (defined herein) for the relevant Subject Assets and (ii) the Outside Backup Date; *provided, however*, that if the Back-up Bid becomes the Successful Bid as provided herein, any subsequent breach or failure to perform by the Back-up Bidder may result in the forfeit of the Good Faith Deposit of the Back-up Bidder to the Debtors. If the Successful Bidder consummates the Successful Bid, its Good Faith Deposit to the extent in cash shall be credited towards the purchase price set forth in the Successful Bid.

The Consultation Parties

The Debtors shall consult with Cortland Capital Market Services LLC, as its capacities as agent under the Debtors’ postpetition, superpriority, multiple-draw secured term loan facility (in such capacity, the “Term DIP Agent”) and Pre-Petition Term Loan Agreement (as defined in the DIP Order) (in such capacity, the “Pre-Petition Term Agent”), Bank of America, N.A., as agent under the Debtors’ postpetition, superpriority, secured asset-based revolving credit facility (the “ABL DIP Agent”), Weil, Gotshal & Manges LLP, as counsel to certain DIP Credit Parties and Pre-Petition Credit Parties, and the advisors to the Committee (collectively, the “Consultation Parties” and each, a “Consultation Party”) as explicitly provided for in these Bidding Procedures; *provided, however*, that, in certain circumstances as set forth in these Bidding Procedures, the Debtors shall consult only with the Bid Consultation Parties (as defined below). The “Bid Consultation Parties” shall be all Consultation Parties (and their advisors) other than any Consultation Party (and its advisors) that submits a Bid or has a Bid submitted on its behalf for

so long as such Bid remains open. For the avoidance of doubt, the Debtors' obligation to consult with the Consultation Parties may, in the Debtors' discretion, be met by (i) consultation solely with the respective advisors to each of the Consultation Parties, as set forth in "Auction Qualification Process – Bid Deadline" above (collectively, the "Consultation Party Advisors"); or (ii) consultation with each of the Consultation Parties and their Consultation Party Advisors at the same time or in separate communications.

Reservation of Rights of the Debtors

Except as otherwise provided in the Purchase Agreement, these Bidding Procedures or the Bidding Procedures Order, the Debtors further reserve the right, in their reasonable business judgment in consultation with the Consultation Parties or, to the extent provided herein, the Bid Consultation Parties to: (i) determine which bidders are Qualified Bidders; (ii) determine which Bids are Qualified Bids; (iii) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal for substantially all of the Subject Assets or for each of the Lot(s); (iv) reject, at any time prior to the closing of the Auction or, if no Auction is held, at any time prior to entry of the Sale Order, any Bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of these Bidding Procedures, the requirements of the Bankruptcy Code or, if applicable, the Intercreditor Agreement, or (c) contrary to the best interests of the Debtors and their estates; (v) waive terms and conditions set forth herein with respect to all potential bidders; (vi) impose additional terms and conditions; (vii) extend the deadlines set forth herein; (viii) continue or cancel the Auction and/or Sale Hearing in open court, or by filing a notice on the docket of the Cases, without further notice; (ix) include any other party as a Consultation Party and attendee at the Auction; and (x) modify the Bidding Procedures and implement additional procedural rules that the Debtors determine, in their business judgment will better promote the goals of the bidding process and discharge the Debtors' fiduciary duties; *provided, however*, that any modification or additions to the Bidding Procedures shall not be inconsistent with the Bidding Procedures Order or any other Order of the Bankruptcy Court, unless otherwise ordered by the Bankruptcy Court.

Exhibit 1

Lots

Lot Number	Assets	General Description
1.	Gramercy Assets	Alumina refinery in Gramercy, Louisiana (the " <u>Gramercy Facility</u> ") owned and operated by Noranda Alumina LLC (" <u>Noranda Alumina</u> ") together with any assets, real property, personal property, plants, equipment, inventory, and accounts receivable associated therewith.
2.	New Madrid Assets	<p>Primary aluminum reduction plant and fabrication facilities, located in New Madrid, Missouri, owned by Noranda Aluminum, Inc. ("<u>NAI</u>") together with any assets, real property, personal property, plants, equipment, inventory, and accounts receivable associated therewith, including but not limited to:</p> <p>(A) The primary aluminum casthouse facility consisting of sow, billet and foundry production equipment, including full overhead crane access, melt and holding furnaces, casting equipment, homogenizing furnaces, saws and packaging equipment; and</p> <p>(B) Three drawn wire rod mills co-located on a separate portion of the site. Rod mills #1 and #2 have a combined operating capacity of approximately 155 million pounds per year. The new, rod mill #3 has an operating capacity of approximately 220 million pounds per year.</p>
3.	St. Ann Assets	The Debtors' bauxite mining assets and interests located in Jamaica owned and operated by Noranda Bauxite Ltd.

Exhibit 2

Confidentiality Agreement

NORANDA ALUMINUM HOLDING CORPORATION

801 Crescent Centre Drive – Suite 600
Franklin, TN 37067

[Name of Potential Bidder] (“[]”)

[Address]

Attention: []

Ladies & Gentlemen:

In connection with []’s (the “Recipient”) consideration of a possible sale transaction (a “Transaction”) involving Noranda Aluminum Holding Corporation and its wholly owned subsidiaries, each a debtor and debtor-in-possession (collectively, the “Company”), the Company may, subject to the terms and conditions of this letter agreement (this “Agreement”) and the Bidding Procedures Order (as defined below), make available to the Recipient certain Confidential Information (as defined below). By countersigning in the space below, the Recipient agrees as follows:

1. Use of Confidential Information.

(a) The Recipient will keep the Confidential Information strictly confidential and use the Confidential Information solely for the purpose of evaluating a Transaction and not for any other purpose, including in any way detrimental to the Company. The Recipient will treat the Confidential Information in all material respects in the same way that it treats its own non-public proprietary information, but in any event using no less than a reasonable degree of care. The Recipient may disclose the Confidential Information to its Representatives whom the Recipient reasonably determines need to know the information for the purpose of evaluating a Transaction; *provided*, that the Recipient will (a) inform such Representatives receiving the Confidential Information of the confidential nature thereof and cause them to comply with the provisions of this Agreement as if they were a party to this Agreement and had undertaken the same obligations as are undertaken by the Recipient and (b) be responsible and indemnify the Company for any actions taken (or omissions) by the Recipient’s Representatives that would constitute a breach of the terms of this Agreement applicable to the Recipient’s Representatives as if such Representative had been a party to this Agreement. Subject to the immediately following sentence, as used in this Agreement, “Representatives” means, with respect to any party hereto, such party’s affiliates and its and their respective directors, officers, employees, advisors (including attorneys, accountants, investment bankers, financial advisors and specialist consultants) and debt financing sources (which you will identify to us upon request) of such party and such party’s affiliates. Notwithstanding anything to the contrary contained herein, without the prior written consent of the Company, the Recipient agrees that neither the Recipient nor any of its Representatives will disclose any Confidential Information to any actual or potential equity financing sources, joint bidders or co-bidders.

The Recipient agrees that neither it nor any of its Representatives will, without the prior written consent of the Company, directly or indirectly, (i) disclose to any other person, other than its Representatives, (x) the fact that discussions or negotiations may take place, are taking place or have taken place concerning a Transaction or any of the terms or other facts relating thereto, including the status thereof, (y) the existence or the terms of this Agreement or (z) the fact that any party or its Representatives has received or produced any Confidential Information or (ii) make any public statement concerning the Transaction (items (i) and (ii), collectively, "Transaction Information") in each case, other than pursuant to the terms and requirements of any order entered by the U.S. Bankruptcy Court for the Eastern District of Missouri in the Company's jointly administered chapter 11 cases (Case No. 16-10083) approving bidding procedures in connection with any Transaction (the "Bidding Procedures Order"); *provided, however*, that any party may disclose Transaction Information to the extent (1) required by, and subject to, Section 4 of this Agreement, (2) pursuant to and in accordance with the Bidding Procedures Order; or (3) it has received written advice from its outside counsel that it is required to make such disclosure in order to avoid violating the federal securities laws and, in the case of clauses (1) or (3), the requirement to make such disclosure does not arise from any breach of this Agreement by such party or its Representatives or as a result of unilateral actions by such party or its Representatives; and, *provided, further*, that, in the case of clause (3), to the extent legally permissible, the Recipient will and will cause its Representatives to give the Company reasonable advance notice of, and a copy of, such intended disclosure, will limit such disclosure to that which is legally required, and will consider, in good faith, including any comments or modifications proposed by the other party concerning the nature and scope of such intended disclosure.

2. Definition of Confidential Information. For purposes of this agreement, the term "Confidential Information" includes (a) all information, whether in oral, visual, written, electronic or other form, concerning the Company and/or its subsidiaries (whether prepared by the Company or its agents or other Representatives, irrespective of the form of communication and when such communication was made, and whether or not marked as confidential) that is or has been furnished to the Recipient by or on behalf of the Company and (b) all notes, memoranda, analyses, reports, forecasts, data, compilations, studies, interpretations, summaries or other documents that are prepared by the Recipient or any of its Representatives that contain, reflect or are based on, in whole or in part, any of the foregoing ("Derived Confidential Information"), *provided, however*, that the term "Confidential Information" does not include information that:

- (a) is or becomes generally available to the public other than as a result of a breach of this agreement by the Recipient or its Representatives;
- (b) was within the Recipient's or its Representatives' possession before it was furnished to the Recipient by or on behalf of the Company, if the source of the information was not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company or any other party with respect to that information;

- (c) is or becomes available to the Recipient or its Representatives on a non-confidential basis from a source other than the Company, if the source of the information was not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Company or any other party with respect to that information; or
- (d) is independently developed by the Recipient or its Representatives without use of information disclosed by or on behalf of the Company or in breach of this Agreement.

3. Termination of Discussions. Other than as may be required in the Bidding Procedures Order, the Company will not be under any contractual or legal obligation of any kind whatsoever to furnish Transaction Information or Confidential Information to the Recipient and reserves the right, in its sole discretion, to terminate providing Transaction Information or Confidential Information at any time. Upon the request of the Company for any or no reason, or, if the Recipient decides not to proceed with the Transaction, the Recipient will promptly inform the Company of that decision, and the Recipient will, and will cause its Representatives to, promptly deliver to the Company or destroy all Transaction Information and Confidential Information, including all Derived Confidential Information (and all copies thereof and extracts therefrom). Compliance with the preceding sentence will be certified in writing to the Company by an authorized officer of the Recipient within five (5) business days of the delivery of the notice by the Company. Notwithstanding the foregoing, the Recipient and its Representatives may retain copies of the Confidential Information (in electronic or paper form) (i) contained in an automatic archived computer system backup to the extent such copies are not readily available to end users and cannot readily be expunged from such computer system backup (i.e., if doing so would entail more than a de minimis level of effort) or (ii) to the extent that such retention is required to demonstrate compliance with applicable law, rule, regulation or professional standards, or to comply with the Recipient's bona fide document retention policy; *provided, however,* that any such information so retained shall be held in compliance with the terms of this Agreement for so long as such Confidential Information is retained and notwithstanding the termination of this Agreement. Any and all duties and obligations existing under this Agreement shall remain in full force and effect, notwithstanding the delivery or destruction of the Transaction Information and Confidential Information required by this Section 3.

4. Requested or Required Disclosure. If the Recipient or any of its Representatives is requested or required by judicial, regulatory, governmental, administrative or other similar legal proceeding or process (by oral questions, interrogatories, requests for information or documents in a legal proceeding, subpoena, civil investigation, demand or other similar process) to disclose any of the Transaction Information or Confidential Information, the Recipient will and will cause its Representatives to provide the Company to the extent permitted by applicable law, rule or regulation with prompt written notice of the existence, terms and circumstances surrounding such request or requirement so that the Company may seek an appropriate protective order and/or, in its sole discretion, waive in writing compliance by the Recipient and/or its Representatives with the applicable provisions of this Agreement. If, and to the extent, in the absence of a protective order or the receipt of a waiver from the Company after a request in writing therefor is made by the Recipient (such request to be made as soon as practicable to allow the Company a reasonable amount of time to respond thereto), the Recipient or any of its

Representatives or their respective affiliates are legally required as advised by counsel in writing to disclose Transaction Information or Confidential Information to any judicial, governmental, regulatory, administrative or other similar entity, the Recipient or any of its Representatives or their respective affiliates will limit such disclosure to that which is legally required and, to the extent available, will use commercially reasonable efforts to obtain confidential treatment of such disclosure, and thereafter may disclose such information without liability hereunder. In no event will the Recipient or any of its Representatives oppose action by the Company to obtain a protective order or other relief to prevent the disclosure of the Transaction Information or Confidential Information or to obtain reliable assurance that confidential treatment will be afforded the Transaction Information or Confidential Information and, if the Company seeks such an order or other relief, the Recipient agrees to, and shall cause its Representatives to, cooperate as the Company shall reasonably request at the Company's expense.

5. Securities Laws. The Recipient hereby (a) acknowledges that it is aware (and that its agents or other Representatives who are apprised of the matters contemplated hereby have been or will be advised) that federal and state laws prohibit persons with material non-public information about a company obtained directly or indirectly from that company from purchasing or selling debt or equity securities (including derivative securities) of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person may purchase or sell such securities, and (b) agrees not to purchase or offer to purchase any securities of the Company while in the possession of any such information.

6. Certain Additional Covenants.

(a) *Standstill*. As of the date of this Agreement, except as previously disclosed to the Company in writing, the Recipient represents that neither it nor any of its affiliates directly or beneficially owns, (i) any of the Company's or its subsidiaries' debt (including any interest in any term loans or revolving credit loans to the Company) or equity securities, (ii) any direct or indirect options, contract or other rights (including, any puts, calls, swaps or other derivative securities) to acquire or dispose of any such securities or otherwise related to the trading price or market value of such securities, or (iii) any economic or voting interests associated with any such securities ((i)-(iii) collectively, the "Company Securities").

(b) *Non-Solicitation*. The Recipient agrees that for a period of two years from the date of this Agreement, it will not, directly or indirectly, solicit for employment or hire any employee of the Company with whom the Recipient has had contact or who became known to the Recipient in connection with its consideration of the Transaction; *provided, however*, that the foregoing provision will not prevent the Recipient from employing any such person who contacts it on his or her own initiative without any direct or indirect solicitation by or encouragement from the Recipient or from hiring employees in connection with the consummation of a Transaction by the Recipient.

(c) *Broker; Co-Bidders; Financing Lock-Ups*. The Recipient hereby represents and warrants that it is not acting and will not act as a broker for or representative of any other person in connection with a Transaction or any other transaction with the Company or its affiliates and is considering a Transaction only for its own account and for the account of its affiliates. Unless

disclosed and with the prior written consent of the Company, the Recipient will not act as a joint-bidder or co-bidder with any other person with respect to a Transaction or any other transaction with the Company or its affiliates and will not enter into any discussions, negotiations, agreements or understandings, whether written or oral, with any other person (other than any of its Representatives in such capacity) regarding a Transaction or any other transaction with the Company or its affiliates other than the Company and its Representatives and the Recipient's Representatives as permitted hereunder. The Recipient agrees not to, directly or indirectly, enter into any agreement, arrangement or any other understanding, whether written or oral, with any potential financing source or sources that may reasonably be expected to limit, restrict, restrain or otherwise impair, in any manner, directly or indirectly, the ability of such financing source or sources to provide financing or other assistance to any other party in any other possible transaction involving the Company or its affiliates.

7. Coordination of Contacts. The Recipient will agree, and will cause its Representatives to agree, that all (i) communications regarding the Transaction, (ii) requests for additional information, facility tours or management meetings, and (iii) discussions or questions regarding procedures with respect to the Transaction, will be first submitted or directed to the PJT Partners LP and not to the Company.

8. No Warranty or Accuracy; Transaction Agreement. The Recipient understands and agrees that neither the Company nor its affiliates or Representatives (a) makes any representations or warranties, express or implied, with respect to any of the Transaction Information or Confidential Information or (b) will assume any responsibility or have any liability, including in contract, tort or under federal or state securities laws, to the Recipient or its Representatives resulting from the selection or use of the Transaction Information or Confidential Information by the Recipient or its Representatives. The Recipient further agrees that it is not entitled to rely on the accuracy or completeness of the Transaction Information or Confidential Information and that the Recipient will be entitled to rely solely on such representations and warranties as may be included in any Transaction Agreement (as defined below), if any, subject to such limitations and restrictions as may be contained therein. The Recipient and the Company agree that no contract or agreement providing for a Transaction will be deemed to exist between the Recipient and the Company unless and until the Recipient and the Company execute and deliver a final definitive agreement relating thereto (a "Transaction Agreement"), if any, and the Recipient and the Company hereby waive, in advance, any claims (including breach of contract) in connection with a Transaction unless and until the Recipient and the Company execute and deliver a Transaction Agreement. The Recipient further acknowledges and agrees that the Company reserves the right, in its sole discretion, to reject any and all proposals made by the Recipient or its Representatives with regard to a Transaction and to terminate discussions and negotiations with the Recipient at any time and for any reason (or no reason). The Recipient further understands that the Company will be free to establish and change any process or procedure with respect to a Transaction as the Company in its sole discretion determines (including negotiating with any other interested party and entering into a final definitive agreement relating to a Transaction with any other party without prior notice to the Recipient or any other person).

9. Equitable Relief. It is further understood and agreed that money damage would not be a sufficient remedy for any breach of this Agreement, that the Transaction Information

and Confidential Information is valuable and unique and that any disclosure thereof in breach of this Agreement will result in irreparable injury to the Company and that the Company will be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and the Recipient further agrees to waive any requirement for the security or posting of any bond in connection with such remedy. Such remedy will not be the exclusive remedy for breach of this Agreement but will be in addition to all other remedies available at law or equity to a Company. The Recipient agrees that it will not oppose the granting of such relief on the basis that the Company has an adequate remedy at law. In addition, the Recipient agrees that if it is held by any court of competent jurisdiction to be in violation, breach or nonperformance of any of the terms of this Agreement, then it will pay all costs of the Company of such action or suit, including reasonable attorneys' fees.

10. Termination. Except as otherwise set forth in Section 3, this Agreement will be effective as of the date of this Agreement and will terminate without further action two (2) years after the date of this Agreement. Such termination will not, however, affect the liability of any party for any prior breach of any provision hereof.

11. Third Party Beneficiaries. The Recipient agrees that, except for such parties or as contemplated by Section 15, nothing herein expressed or implied is intended to confer upon or give any rights or remedies to any other person under or by reason of this Agreement.

12. Governing Law. This Agreement will be governed by New York law, without giving effect to the principles of conflict of laws thereof. Each party hereto consents to personal jurisdiction in New York and Missouri and voluntarily submits to the jurisdiction of any State of New York court, Federal court sitting in the State of New York, and the bankruptcy court of the Eastern District of Missouri, Southeastern Division, in any action or proceeding with respect to this Agreement and hereby waives unconditionally any objection to the laying of venue in such forum, including any claim of inconvenient forum, and neither party will bring any claim regarding this Agreement in any other court. **ANY RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, ACTION OR PROCEEDING, DIRECTLY OR INDIRECTLY, ARISING OUT OF, OR RELATING TO, THIS AGREEMENT ARE EXPRESSLY AND IRREVOCABLY WAIVED BY THE RECIPIENT AND THE COMPANY.**

13. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement.

14. Certain Definitions. In addition to the terms defined elsewhere herein, for purposes of this Agreement, (a) the term "affiliate" has the meaning set forth in Rule 12b-2 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 and (b) the term "person" means any individual or legal entity, including any corporation, general or limited partnership, limited liability company, trust or other entity or company. The term "including" and any variation thereof shall be deemed to be followed by the words "without limitation" except where the meaning clearly indicates otherwise.

15. Miscellaneous. This Agreement may be modified or waived only by a separate writing duly executed by both parties hereto expressly so modifying or waiving this Agreement. This Agreement contains the entire agreement between the Company and the Recipient concerning the subject matter hereof and supersedes all previous agreements, written or oral, to the extent relating to the exchange, disclosure or treatment of Transaction Information and Confidential Information contemplated hereby or any consideration, investigations, discussions or negotiations of a Transaction. No failure or delay by any party or any of its respective Representatives in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege under this Agreement. If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby. No party hereto may assign its rights or obligations under this Agreement to any person without the prior written consent of the other parties hereto, except that the Company may assign this Agreement to any affiliate or successor or acquirer (including assets) thereof without the Recipient's prior written consent. This Agreement will be binding upon each party hereto and its respective successors and permitted assigns and will inure to the benefit of, and be enforceable by, each other party hereto and its respective successors and assigns. The Company has retained PJT Partners LP, Alvarez & Marsal North America LLC, Paul, Weiss, Rifkind, Wharton & Garrison LLP and Ernst & Young LLP financial, legal and accounting advisors, respectively, in connection with the possible Transaction. By executing this Agreement, the Recipient irrevocably consents to, and waives all objections to any conflict of interest on the part of PJT Partners LP, Alvarez & Marsal North America LLC, Paul, Weiss, Rifkind, Wharton & Garrison LLP and Ernst & Young LLP that may result from, such representation.

16. Privilege. To the extent that any Confidential Information may include materials subject to the attorney-client privilege, work product doctrine or any other applicable privilege concerning pending or threatened legal proceedings or governmental investigations, the parties hereto understand and agree that they have a commonality of interest with respect to such matters and it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege. All Confidential Information that is entitled to protection under the attorney-client privilege, work product doctrine or other applicable privilege shall remain entitled to such protection under these privileges, this Agreement, and under the joint defense doctrine.

[Remainder of page intentionally left blank]

If you are in agreement with the foregoing, please sign and return one copy of this Agreement, which thereupon will constitute our agreement with respect to its subject matter.

Very truly yours,

NORANDA ALUMINUM HOLDING
CORPORATION

By: _____
Name:
Title:

ACCEPTED AND AGREED
AS OF THE DATE BELOW:

RECIPIENT: [_____]

By: _____
Name:
Title:

Dated: _____, 2016