

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

NOTICE OF FILING OF FORM ASSET PURCHASE AGREEMENT

PLEASE TAKE NOTICE THAT, pursuant to paragraph 20 of the *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 [ECF No. 875]*, attached hereto as Exhibit A is a copy of the form asset purchase agreement. The form of asset purchase agreement will also be available on the Debtors' case website at <https://cases.primeclerk.com/noranda>.

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Dated: July 13, 2016
St. Louis, Missouri

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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 July, 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.

/s/ Christopher J. Lawhorn

Exhibit A

ASSET PURCHASE AGREEMENT¹

DATED AS OF [•], 2016

BY AND [AMONG][BETWEEN]

[•], AS BUYER,

AND

[_____]², AS SELLERS

¹ Draft subject to change based on Lot(s) purchased by Buyer. References to Lot numbers are to the Lots as described in Exhibit A to the Bidding Procedures.

² Seller(s) dependent on Lot(s) to be purchased by Buyer.

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Schedule 4.3(e) Seller's Joint Venture Deliverables]³
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³ Insert if Lot 3 is purchased.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of [•], 2016 (the “Execution Date”), is made and entered into by and [among][between] [•], a [•] (“Buyer”)⁴, [Noranda Aluminum, Inc., a Delaware corporation (“NAI”),]⁵ [Noranda Alumina LLC, a Delaware limited liability company (“NAL”), and]⁶ [Noranda Bauxite Limited (f/k/a St. Ann Bauxite Limited), a company organized and existing under the laws of Jamaica [(“NBL”)]⁷ (each a “Seller” and, collectively, “Sellers”).⁸ Capitalized terms used herein and not otherwise defined herein have the meanings set forth in Article 1.

RECITALS

WHEREAS, on February 8, 2016, Sellers and certain of their Affiliates (collectively, the “Debtors”) filed voluntary petitions (the “Bankruptcy Case”) under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri (the “Bankruptcy Court”);

WHEREAS, in accordance with the Bidding Procedures and subject to the terms and conditions set forth in this Agreement and the entry of the Sale Order, Sellers desire to sell to Buyer all of the Acquired Assets and to assign to Buyer all of the Assumed Liabilities, Buyer desires to purchase from Sellers all of the Acquired Assets and assume all of the Assumed Liabilities, and the Parties intend to effectuate the transactions contemplated by this Agreement, upon the terms and conditions hereinafter set forth;

WHEREAS, the Acquired Assets and Assumed Liabilities shall be purchased and assumed by Buyer pursuant to the Sale Order, free and clear of all Encumbrances (other than Permitted Encumbrances), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure; and

WHEREAS, each Seller’s ability to consummate the transactions set forth in this Agreement is subject to, among other things, the entry of the Sale Order by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the foregoing and of the representations, warranties, covenants, agreements and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

⁴ This Agreement assumes that Buyer is a creditworthy entity; otherwise, all obligations (payment and performance) will need to be guaranteed by such an entity.

⁵ Insert if Lot 2 is purchased.

⁶ Insert if Lot 1 is purchased.

⁷ Insert if Lot 3 is purchased.

⁸ Use of “Seller” vs. “Sellers” dependent on Lot(s) to be purchased by Buyer.

ARTICLE 1

DEFINITIONS

1.1 Definitions.

For purposes of this Agreement, the following terms have the meanings specified or referenced below.

“ABL DIP Agent” means BofA, together with its successors, in its separate capacities as administrative and collateral agent under the ABL DIP Agreement.

“ABL DIP Agreement” means that certain Post-Petition Credit Agreement, dated as of February 9, 2016, by and among certain Debtors, as borrowers, the lenders party thereto and BofA, as administrative agent, as amended, restated, amended and restated, supplemented, waived and/or otherwise modified prior to the date hereof.

“ABL DIP Credit Parties” means, collectively, the ABL DIP Lenders and the ABL DIP Agent.

“ABL DIP Lenders” means BofA and certain other financial institutions (and their respective successors and assigns) in their capacity as lenders under the ABL DIP Agreement.

“Accounting Referee” has the meaning set forth in Section 3.2(c).

“Accounting Standards” means the accounting standards, principles, policies, procedures, categorizations, definitions, methods, practices and techniques set forth on Exhibit A.

“Accounts Receivable” means, with respect to the Business, all accounts receivable, notes receivable, purchase orders, negotiable instruments, completed work or services that have not been billed, chattel paper, notes and other rights to payment of Sellers, including those consisting of all accounts receivable in respect of services rendered or products sold to customers by Sellers, in each case solely relating to the Business, any other miscellaneous accounts receivable related solely to the Business, and any claim, remedy or other right of Sellers solely related to any of the foregoing, together with all unpaid financing charges accrued thereon and any payments with respect thereto, but excluding any accounts receivables owed by a Debtor or any of its subsidiaries.

“Acquired Assets” has the meaning set forth in Section 2.1.

“Acquired Intellectual Property” has the meaning set forth in Section 2.1(g).

“Affiliate” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act; provided, however, that for purposes of this Agreement, the Joint Venture shall not constitute an Affiliate of any Seller.

“Agreement” has the meaning set forth in the introductory paragraph.

“Allocation Statement” has the meaning set forth in Section 3.3(b).

“Antitrust Law” means, collectively, the HSR Act, Title 15 of the United States Code §§ 1-7 (the Sherman Act), Title 15 of the United States Code §§ 12-27 and Title 29 of the United States Code §§ 52-53 (the Clayton Act), the Federal Trade Commission Act (15 U.S.C. § 41 et seq.), and the rules and regulations promulgated thereunder, and any other Legal Requirements that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition, as such of the foregoing are enacted and in effect as of the date hereof.

“Assumed Benefit Liabilities” has the meaning set forth in Section 2.3(e).

“Assumed Contracts” has the meaning set forth in Section 2.5(a)(i).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Assumption Agreement” means an Assignment and Assumption Agreement in customary form reasonably acceptable to the Parties.

“Available Contracts” has the meaning set forth in Section 2.5(a)(i).

“Avoidance Action” means any claim, right or cause of action of any Seller arising under Chapter 5 of the Bankruptcy Code and any analogous state law claims relating to the Acquired Assets or the Business.

“Bankruptcy Case” has the meaning set forth in the recitals.

“Bankruptcy Code” means Title 11 of the United States Code, Sections 101 *et seq.*

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Benefit Plan” means any (i) “employee benefit plan” within the meaning of Section 3(3) of ERISA or (ii) other employee benefit plans, agreements, programs, policies, arrangements or payroll practices, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise), including any plan, program, arrangement or agreement that is a pension, profit-sharing, savings, retirement, employment, consulting, severance pay, termination, executive compensation, incentive compensation, deferred compensation, bonus, stock purchase, stock option, phantom stock or other equity-based compensation, change in control, retention, salary continuation, vacation, sick leave, disability, death benefit, group insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which any Seller is the owner, the beneficiary, or both), Code Section 125 “cafeteria” or “flexible” benefit, employee loan, educational assistance or fringe benefit plan, program, arrangement or agreement, whether written or oral, in each case, that (x) is sponsored, maintained or contributed to by Parent or any Seller, or for which Parent or any Seller has any obligation to sponsor, maintain or contribute to, or for which Parent or any Seller has

any direct or indirect liability, whether contingent or otherwise and (y) under which any current or former officer, director, employee, consultant (or their respective beneficiaries) of Sellers has any present or future right to benefits, except for any Multiemployer Plan.

“Bidding Procedures” means the bid procedures attached as Exhibit A to the Bidding Procedures Order.

“Bidding Procedures Order” means the Order of the Bankruptcy Court, dated [•], 2016, approving the Bidding Procedures.

“Bill of Sale” means a bill of sale in customary form reasonably acceptable to the Parties.

“BofA” means Bank of America, N.A.

[“Business” means[, collectively,] the:

(i) [bauxite mining operations of NBL, including NBL’s interest in the Mining Lease and the Joint Venture;]⁹

(ii) [business and operations of NAL solely to the extent related to the refining and converting of bauxite into alumina, as currently conducted at the NAL Facility; and]¹⁰

(iii) [business and operations of NAI solely to the extent related to the production of primary aluminum and the conversion of molten primary aluminum into value-added products, as conducted at the NAI Facility prior to the idling of the NAI Facility.]¹¹

in each case, other than with respect to such business and operations to the extent they relate to any Excluded Assets or Excluded Liabilities.]

“Business Day” means any day of the year (other than a Saturday or Sunday) on which national banking institutions in New York or Missouri are open to the public for conducting business and are not required or authorized to close.

“Buyer” has the meaning set forth in the introductory paragraph.

“Buyer Employees” has the meaning set forth in Section 8.5(a).

“Cash Consideration” has the meaning set forth in Section 3.1(a).

⁹ Insert if Lot 3 is purchased.

¹⁰ Insert if Lot 1 is purchased.

¹¹ Insert if Lot 2 is purchased.

“Claim” means a “claim” as defined in Section 101(5) of the Bankruptcy Code, against any Seller.

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” means the date and time as of which the Closing occurs as set forth in Section 4.1.

“Closing Statement” has the meaning set forth in Section 3.2(b).

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

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

“Collective Bargaining Agreement” has the meaning set forth in Section 5.10(a).

“Company” or “Parent” means Noranda Aluminum Holding Corporation, a Delaware corporation and the ultimate parent of Sellers.

“Confidential Information” has the meaning set forth in Section 12.2.

“Confidentiality Agreement” has the meaning set forth in Section 7.1(c).

“Contract” means any legally binding agreement, contract, obligation, undertaking, lease (including Leases and Lessor Leases), sublease, purchase order, arrangement, license, commitment, or other binding arrangement or understanding (in each case whether written or oral), and any amendments, modifications or supplements thereto.

“Copyrights” means all United States and foreign copyright rights in any original works of authorship, whether registered or unregistered, including all copyright registrations and applications.

“Cortland” means Cortland Capital Market Services LLC.

“Cure Costs” means all monetary liabilities, including pre-petition monetary liabilities, of Sellers that must be paid or otherwise satisfied to cure all of Sellers’ monetary defaults under the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code at the time of the assumption thereof and assignment to Buyer as provided hereunder as such amounts are determined by the Bankruptcy Court or approved pursuant to the assignment and assumption procedures provided for in the Bidding Procedures Order.

“Cure Notice” means, with respect to each Available Contract, the notice submitted by Sellers to the counterparty or counterparties thereto pursuant to the Bidding Procedures Order setting forth, among other things, the Cure Cost amount with respect thereto as calculated by Sellers.

“Debtors” has the meaning set forth in the recitals.

“Deeds” means special (or limited) warranty deeds, or jurisdictional equivalents, as the case may be, in recordable form for the appropriate jurisdiction, transferring title to the Owned Real Property (subject only to Permitted Encumbrances).

“Determination Date” has the meaning set forth in Section 2.5(a)(i).

“DIP Agreements” means, collectively, the ABL DIP Agreement and the Term DIP Agreement.

“DIP Credit Parties” means, collectively, the ABL DIP Credit Parties and the Term DIP Credit Parties.

“DIP Debtors” means NAI and its affiliated debtors and debtors in possession.

“DIP Order” means 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.

“Disclosure Schedules” means the disclosure schedules attached hereto, dated as of the date hereof, delivered or made available by Sellers to Buyer in connection with the execution of this Agreement.

“Documents” means all of the documents that are used or useful in, or held for use in, the Business (other than Tax Returns and Tax workpapers).

“Employees” means all of the Seller Employees and Specified Employees.

“Encumbrance” means any “interest” as that term is used in Section 363(f) of the Bankruptcy Code, mortgage, deed of trust, pledge, security interest, encumbrance, easement, condition, reservation, lien (statutory or otherwise), mechanics lien, Claim, covenant, encroachment, lease, right of use or possession, or other similar third party interest, or other title or survey defect, charge, hypothecation, deemed trust, action, easement, right-of-way or covenant on real property, other than any license of Intellectual Property, whether imposed by Contract, Legal Requirement, equity or otherwise.

“Environmental Laws” means any and all Legal Requirements concerning or relating to (a) public health and safety as may be affected by the Release of, or exposure to, Hazardous Substances or (b) pollution or protection of the environment, including those relating to (i) the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, storage, disposal, distribution, importing, labeling, testing, processing, discharge, Release, threatened Release, control, cleanup, or other action or failure to act involving pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials, substances or wastes; and (ii) human health as affected by hazardous or toxic substances[but

excluding, in each case, any Legal Requirements concerning or relating to environmental provisions of any applicable Mining and Mining Safety Law].¹²

“Environmental Permits” has the meaning set forth in Section 5.5.

“Equipment” means all furniture, fixtures, equipment, computers, machinery, vehicles, apparatus, appliances, implements, telephone systems, signage, supplies and all other tangible personal property of every kind and description, and Improvements and tooling of Sellers, solely used, or held for use, in connection with the operation of the Business, wherever located, including communications equipment, information technology assets, and any attached and associated hardware, routers, devices, panels, cables, manuals, cords, connectors, cards, and vendor documents, and including all warranties of the vendor applicable thereto.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any Person that would be considered a single employer with any Seller under Sections 414(b), (c), (m) or (o) of the Code.

“Estimated Working Capital” has the meaning set forth in Section 3.2(a).

“Estimated Net Working Capital Adjustment” means Estimated Working Capital minus Target Working Capital, expressed as a positive number if positive, and as a negative number if negative, as determined in accordance with Section 3.2.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Contracts” has the meaning set forth in Section 2.5(a)(i).

“Excluded Employees” means the Employees listed on Schedule 1.1(b).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Execution Date” has the meaning set forth in the introductory paragraph.

“Existing Stock” has the meaning set forth in Section 8.7.

“Extended Contract Period” has the meaning set forth in Section 2.5(a)(i).

[“Facilities” means, collectively, the NAI Facility and the NAL Facility.]¹³

“FCPA” has the meaning set forth in Section 5.15.

¹² Insert if Lot 3 is purchased.

¹³ Defined term contemplates the purchase of Lots 1 and 2. To be updated if Buyer does not purchase both Lots 1 and 2.

“Final Order” means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Bankruptcy Case (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed (other than such modifications or amendments that are consented to by Buyer) and as to which (A) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, stay, reargument or rehearing shall then be pending or (B) if an appeal, writ of certiorari, new trial, stay, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument or rehearing shall have expired, as a result of which such Proceeding or Order shall have become final in accordance with Bankruptcy Rule 8002; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedures, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, shall not cause an Order not to be a Final Order.

“FLSA” means Fair Labor Standards Act of the United States Department of Labor, and any state or local laws governing wages, hours, and/or overtime pay.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Good Faith Deposit” has the meaning set forth in the Bidding Procedures.

“Governmental Authority” means any United States federal, state or local or any foreign government, multi-national organization, quasi-governmental authority, or other similar recognized governmental authority or regulatory or administrative authority, agency or commission or any court, tribunal or judicial body having jurisdiction.

“Governmental Authorization” means any approval, consent, license, Permit, waiver or other authorization issued or granted by or under the authority of any Governmental Authority.

“Hazardous Substance” means any “hazardous waste,” “hazardous material” or “hazardous substance” under any Environmental Law [or Mining and Mining Safety Law]¹⁴.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the rules and regulations promulgated thereunder.

“Improvements” means the buildings, plants, structures, fixtures, systems, facilities, infrastructure and other improvements affixed or appurtenant to the Owned Real Property or Leased Real Property.

“Incorporated Information” means and includes any and all matters disclosed in (i) the Company’s filings with the SEC, including, its annual reports on Form 10-K, quarterly

¹⁴ Insert if Lot 3 is purchased.

reports on Form 10-Q and current reports on Form 8-K (but excluding any disclosures set forth in any “risk factors” section, any disclosures in any “forward-looking statements” section and any other disclosures that are similarly nonspecific, predictive or forward-looking in nature, in each case other than any specific historical factual information contained therein, which shall not be excluded), (ii) the Statements of Financial Affairs filed by the Debtors with the Bankruptcy Court on March 28, 2016 (Docket Ref. No. 554-5) as the same may be amended or supplemented from time to time, (iii) the Schedules of Assets and Liabilities filed by the Debtors with the Bankruptcy Court on March 28, 2016 (Docket Ref. No. 553-5) as the same may be amended or supplemented from time to time, (iv) any and all other filings made by or on behalf of any Debtor with the Bankruptcy Court in connection with the Bankruptcy Case, in each case prior to the Execution Date and (v) the “dataroom,” access to which has been made available to Buyer.

“Indebtedness” means, at any time and with respect to any Person: (a) all indebtedness of such Person for borrowed money; (b) all indebtedness of such Person for the deferred purchase price of property or services (other than trade payables, other expense accruals and deferred compensation items arising in the Ordinary Course of Business); (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the Ordinary Course of Business in respect of which such Person’s liability remains contingent); (d) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), other than inventory or other property purchased by such Person in the Ordinary Course of Business; [(e) all obligations of such Person under leases which have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases, to the extent required to be so recorded;] (f) all reimbursement, payment or similar obligations of such Person, contingent or otherwise, under acceptance, letter of credit or similar facilities, in each case only to the extent drawn; (g) all Indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly by such Person; and (h) all Indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“Intellectual Property” means all intellectual property, including all Copyrights, Patents, Trademarks and Trade Secrets.

“Intercompany Claims” means any and all claims and causes of action held or available to any Debtor or a subsidiary of a Debtor against any other Debtor or any subsidiary of the Debtors.

“Inventory” has the meaning set forth in Section 2.1(a).

“IRS” has the meaning set forth in Section 3.3(e).

[“JBML” means Jamaica Bauxite Mining Limited, a company organized and existing under the laws of Jamaica and wholly-owned by the Government of Jamaica.

“Joint Venture” means Noranda Jamaica Bauxite Partners, a general partnership formed under the laws of Jamaica, whose partnership interests are forty-nine percent (49%) owned by NBL and fifty-one percent (51%) owned by JBML.

“JV Formation Documents” has the meaning set forth in Section 5.17(a).]¹⁵

“Knowledge” means, with respect to any matter in question, in the case of Sellers, the actual knowledge of any of the individuals listed on Schedule 1.1(a)(i) and, in the case of Buyer, the actual knowledge of any of the individuals listed on Schedule 1.1(a)(ii).

“Lease” has the meaning set forth in the definition of “Leased Real Property.”

“Leased Real Property” means, specifically excluding any Excluded Asset, the interests in real property let, leased or subleased by any Seller, as tenant, subtenant, lessee or sublessee, solely relating to the Business, or in which a Seller had been granted a possessory interest or right to use or occupy all or any portion of the same, solely relating to the Business (each such lease, a “Lease,” and collectively, the “Leases”).

“Legal Requirement” means any federal, state, provincial, local, municipal, foreign, international, or multinational law, constitution, treaty, convention, ordinance, code, rule, regulation or Order enacted, adopted, promulgated, issued or applied by any Governmental Authority or other similar authority.

“Lender Claims” means all Avoidance Actions and any other causes of action available to any Seller or its estate against any of the DIP Debtors, the DIP Credit Parties, the Pre-Petition Credit Parties or any of their respective directors, officers, managers, employees, shareholders, members and advisors.

“Lessor Leases” has the meaning set forth in Section 5.4(b).

“Liability” means a Claim or Encumbrance of any kind or nature whatsoever (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Lot” has the meaning set forth in the Bidding Procedures.

“Material Adverse Effect” means any change, event, effect, state of facts or occurrence that individually or in the aggregate (taking into account all other such changes, events, effects, states of fact or occurrences) has had, or would be reasonably expected to have, a material adverse change in or material adverse effect on (1) the assets, properties, financial condition or results of operations of the Business (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole or (2) the ability of Sellers to consummate the transactions contemplated by this Agreement or to perform any of their obligations under this Agreement, but, in each case, excluding any change, event, effect, state of facts or occurrence to the extent that it results from or arises out of (i) any reasonably anticipated effects of the

¹⁵ Insert if Lot 3 is purchased.

commencement or prosecution of the Bankruptcy Case; (ii) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby, including the effects of the transactions hereby on business relationships with suppliers and customers; (iii) changes in Legal Requirements or GAAP; (iv) any specific action required to be taken (or omitted) by this Agreement or taken (or omitted) at the written request of Buyer; (v) any labor dispute, including any strikes, lockouts, slowdowns, work stoppages, boycotts, handbilling, picketing, walkouts, demonstrations, leafleting, sit-ins, sick-outs, layoffs or other material forms of organized labor disruption; (vi) any change in the United States or foreign economies or financial markets in general, including changes in interest rates or currency exchange rates; (vii) general industry changes in the industries in which Sellers compete; (viii) acts of God (including earthquakes, storms, severe weather, fires, floods and natural catastrophes); (ix) any failure of the Business to achieve external or internal forecasts or financial projections (provided that any change, event, effect, state of facts or occurrence giving rise to such failure may be taken into account in determining whether there has been a Material Adverse Effect); (x) any breach of this Agreement by Buyer; or (xi) any change, event, effect, state of facts or occurrence of economic or political conditions (including acts of terrorism, hostilities, sabotage, military actions or war, or any material worsening of such acts of terrorism, hostilities, sabotage, military actions or war), in each case of clauses (iii), (v), (vi), (vii), (viii) and (xi) to the extent that such conditions do not disproportionately affect in any material respect the Business as compared to the business of other companies that are principally engaged in substantially the same business as Sellers.

“Material Contract” means any Contract of any Seller relating to the Acquired Assets pursuant to which such Seller is reasonably expected to incur potential aggregate Liabilities in an amount greater than or equal to \$10,000,000 per annum and has a term of greater than one year.

[“Mining” means the exploration, extraction, processing, storage and transportation of bauxite and to the Reclamation of lands used for such activities.

“Mining and Mining Safety Law” means all Legal Requirements relating to Mining and Mining safety, including the Mining Act Regulations of 1947.

“Mining Lease” means that Special Mining Lease from the Government of Jamaica, dated September 30, 2004, and held by NBL.

“Mining Permits” means all applicable Permits related to Mining or otherwise required by Mining and Mining Safety Law.]¹⁶

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA.

“NAAC” means Noranda Aluminum Acquisition Corporation, a Delaware Corporation.

¹⁶ Insert if Lot 3 is purchased.

[“NAI” has the meaning set forth in the introductory paragraph.

“NAI Facility” means the aluminum reduction plant and fabrication facilities of NAI located in New Madrid, Missouri]¹⁷

[“NAL” has the meaning set forth in the introductory paragraph.

“NAL Facility” means the alumina refinery of NAL located in Gramercy, Louisiana]¹⁸

[“NBL” has the meaning set forth in the introductory paragraph.]¹⁹

“Net Working Capital” means the current assets set forth on Schedule 1.1(c), minus the current liabilities set forth on Schedule 1.1(c), each only to the extent included in the Acquired Assets or Assumed Liabilities and as determined in accordance with the Accounting Standards as of immediately following the Closing. A sample Net Working Capital calculation is attached hereto as Exhibit A to Schedule 1.1(c).

“Net Working Capital Adjustment” means Net Working Capital minus Estimated Working Capital, expressed as a positive number if positive, and as a negative number if negative, as determined in accordance with Section 3.2.

“Objections Notice” has the meaning set forth in Section 3.3(c).

“Order” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Authority or an arbitrator, mediator or other judicially sanctioned Person or body having jurisdiction over the applicable Person.

“Ordinary Course of Business” means, with respect to any Person, the ordinary and usual course of normal day-to-day operations of such Person and its business, consistent with its past practice; provided that, in the case of Sellers, “Ordinary Course of Business” shall take into account[, with respect to Sellers other than NAI,]²⁰ the business and operating practices that have been utilized by Sellers since the commencement of the Bankruptcy Case [and, with respect to NAI, the business and operating practices utilized by NAI prior to the idling of the NAI Facility].²¹

“Outside Date” has the meaning set forth in Section 11.1(b)(ii).

¹⁷ Insert if Lot 2 is purchased.

¹⁸ Insert if Lot 1 is purchased.

¹⁹ Insert if Lot 3 is purchased.

²⁰ Insert if Lot 2 is purchased.

²¹ Insert if Lot 2 is purchased.

“Owned Real Property” means, specifically excluding any Excluded Asset, all real property owned by any Seller solely relating to the Business, and all right, title and interest of such Seller therein, together with all of such Seller’s right, title and interest in and to the following: (i) all buildings, structures, systems, hereditaments and Improvements located on such real property owned by such Seller and (ii) all easements, if any, in or upon such real property owned by such Seller, licenses and all rights-of-way, beneficial easements, licenses, and other rights, privileges and appurtenances belonging or in any way pertaining to such real property owned by Sellers, in each case solely relating to the Business.

“Party” or “Parties” means, individually or collectively, as applicable, Buyer and Sellers.

“Patents” means United States and foreign patents and patent applications, as well as any continuations, continuations-in-part, divisions, extensions, reexaminations, reissues, renewals and patent disclosures related thereto.

“PBGC” has the meaning set forth in Section 5.11(b).

“Permits” means any and all permits (including Environmental Permits and Mining Permits), licenses, approvals, consents, waivers, franchises, filings, accreditations, registrations, certifications, certificates of occupancy, easements, rights of way, notifications, exemptions, clearances, and authorizations, together with all modifications, renewals, amendments, supplements and extensions thereof and applications therefor, in each case of any Seller are of or from any Governmental Authority, in each case solely relating to Sellers’ operation of the Business and ownership of the Acquired Assets.

“Permitted Encumbrances” means Encumbrances specifically permitted by the Sale Order.

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, unincorporated organization, estate, trust, association, organization or other legal entity or group (as defined in Section 13(d)(3) of the Exchange Act) or Governmental Authority.

“Petition Date” means February 8, 2016.

“Post-Closing Taxes” has the meaning set forth in Section 2.3(k).

“Pre-Closing Statement” has the meaning set forth in Section 3.2(a).

“Pre-Paid Expenses” means any Seller’s rights with respect to all deposits (including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances, pre-paid expenses, prepayments, rights under warranties or guarantees, vendor rebates and other refunds of every kind and nature (whether or not known or unknown or contingent or non-contingent), related solely to the Business and not related to an Excluded Asset or an Excluded Liability, except that professional fee retainers and pre-paid deposits related thereto shall not be included in the definition of “Pre-Paid Expenses.”

“Pre-Petition ABL Agent” means BofA in its capacity as administrative and collateral agent under the Pre-Petition ABL Agreement.

“Pre-Petition ABL Agreement” means that certain ABL Credit Agreement, dated as of February 29, 2012, among the Company, NAAC, the subsidiaries of NAAC party thereto, the lenders party thereto from time to time, and BofA, as administrative agent and collateral agent for the lenders, as amended, restated, amended and restated, supplemented, waived and/or otherwise modified prior to the date hereof.

“Pre-Petition ABL Credit Parties” means, collectively, the Pre-Petition ABL Agent and the Pre-Petition ABL Lenders.

“Pre-Petition ABL Lenders” means those certain financial institutions in their capacity as lenders under the Pre-Petition ABL Agreement.

“Pre-Petition Credit Parties” means, collectively, the Pre-Petition ABL Credit Parties and Pre-Petition Term Credit Parties.

“Pre-Petition Term Agent” means Cortland, in its separate capacities as administrative agent and collateral agent under the Pre-Petition Term Agreement.

“Pre-Petition Term Agreement” means that certain Credit Agreement, dated as of February 29, 2012, among the Company, NAAC, the lenders party thereto from time to time, Cortland, as successor to BofA, as administrative agent and collateral agent for the lenders, as amended, restated, amended and restated, supplemented, waived and/or otherwise modified prior to the date hereof.

“Pre-Petition Term Credit Parties” means, collectively, the Pre-Petition Term Agent and the Pre-Petition Term Lenders.

“Pre-Petition Term Lenders” means those certain financial institutions in their capacity as lenders under the Pre-Petition Term Agreement.

“Previously Omitted Contract” has the meaning set forth in Section 2.5(b)(i).

“Previously Omitted Contract Designation” has the meaning set forth in Section 2.5(b)(i).

“Previously Omitted Contract Notice” has the meaning set forth in Section 2.5(b)(ii).

“Proceeding” means any action, suit, claim, demand, hearing, arbitration, complaint, summons, litigation, mediation, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, formal inquiry or similar matter by or before any Governmental Authority.

“Purchase Price” has the meaning set forth in Section 3.1.

“Real Property” and “Real Properties” means any Seller’s rights with respect to (i) the Owned Real Property; (ii) the Leased Real Property; (iii) all Improvements; (iv) all strips and gores and any land lying in the bed of any public road, highway or other access way, open or proposed, adjoining any Owned Real Property; and (v) all easements, licenses, rights and appurtenances relating to the foregoing that any Seller has a legally recognized interest therein, in each case solely relating to the Business.

[“Reclamation” means reclamation, revegetation, recontouring, abatement, control or prevention of adverse effects of mining activities.]²²

“Release” means, except as authorized by a valid Permit issued under Environmental Law [or Mining and Mining Safety Law]²³, (a) any releasing, spilling, discharging, disposing, leaking, pumping, injecting, pouring, depositing, emitting, leaching of any Hazardous Substance into the outdoor environment, including ambient air, surface water, groundwater and surface or subsurface strata, and (b) migration of Hazardous Substances into or out of any of the Real Property through soil, surface water, or groundwater.

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

[“Resettlement” means any obligation to relocate persons displaced from lands required for bauxite mining and any associated obligations, including land-for-land replacement, monetary compensation, relocation assistance (e.g., costs of shifting + allowance), and assistance in rental/lease of alternative land/property.]²⁴

“Response Period” has the meaning set forth in Section 3.3(c).

“Retained Names and Marks” has the meaning set forth in Section 8.7.

“Sale Motion” means the motion filed by the Debtors pursuant to, *inter alia*, Sections 363 and 365 of the Bankruptcy Code to obtain the Bidding Procedures Order and the Sale Order and approve, among other things, the transactions contemplated by this Agreement.

“Sale Order” means an Order of the Bankruptcy Court, in form and substance reasonably satisfactory to Buyer and Sellers, pursuant to, *inter alia*, Sections 105, 363 and 365 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Acquired Assets to Buyer on the terms and conditions set forth herein, free and clear of all Encumbrances (other than Permitted Encumbrances and Assumed Liabilities), and the assumption and assignment of the Assumed Contracts to and the assumption of the Assumed Liabilities by Buyer, and containing findings of fact and conclusions of law that Buyer has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code, which order shall in any event provide that,

²² Insert if Lot 3 is purchased.

²³ Insert if Lot 3 is purchased.

²⁴ Insert if Lot 3 is purchased.

on the Closing Date and concurrently with the Closing, the Acquired Assets shall be transferred to Buyer free and clear of all then-existing Encumbrances (including, for the avoidance of doubt, free and clear of all successor liability), other than Permitted Encumbrances and Assumed Liabilities.

“SEC” means the Securities and Exchange Commission.

“Secured Taxes” means Taxes that if unpaid would give rise to a statutory lien on the Acquired Assets.

“Securities Act” means the Securities Act of 1933.

“Sellers” has the meaning set forth in the introductory paragraph.

“Seller Employees” means all of the individuals directly employed by a Seller on the Execution Date, as well as any additional persons who become employees of a Seller during the period from the Execution Date through and including the Closing Date.

“Specified Employees” means the individuals directly employed by Debtors (other than any Seller) as set forth on Schedule 1.1(d).

“Straddle Period” has the meaning set forth in Section 8.1(a).

“Subsidiary” means any legal entity with respect to which a specified Person (or a subsidiary thereof) owns, directly or indirectly, more than 50% of the voting stock or other equity or partnership interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such legal entity, or of which the specified Person controls the management. For the avoidance of doubt, the Joint Venture shall not constitute a Subsidiary of any Seller for purposes of this Agreement.

“Target Working Capital” means [_____] Dollars (\$[____]).

“Tax” or “Taxes” (and with correlative meaning, “Taxing”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), escheat, natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any liability for any items described in clause (i) payable by reason of Contract, transferee liability or operation of Legal Requirements (including Treasury Regulation Section 1.1502-6) or otherwise.

“Tax Return” means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules,

statements, or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any Legal Requirements, regulations or administrative requirements relating to any Tax.

“Term DIP Agents” means Cortland, together with its successors, in its separate capacities as administrative and collateral agent under the Term DIP Agreement.

“Term DIP Agreement” means that certain Debtor-In-Possession Term Loan Credit Agreement, dated as of February 11, 2016, among the Company, NAAC, as the borrower representative, NBL, as the Jamaican borrower, certain other Debtors, as guarantors, the lenders party thereto and Cortland, as administrative agent, as amended, restated, amended and restated, supplemented, waived and/or otherwise modified prior to the date hereof.

“Term DIP Credit Parties” means, collectively, the Term DIP Agents and the Term DIP Lenders.

“Term DIP Lenders” means those certain lenders (with their respective successors and assigns) under the Term DIP Agreement.

“Title IV Plan” means any Benefit Plan subject to Title IV of ERISA (which, for the avoidance of doubt, excludes any Multiemployer Plan).

“Trade Payables” means trade obligations and accrued operating expenses incurred in the ordinary course of business of Sellers to the extent that such obligations relate to the Acquired Assets or the Business.

“Trade Secrets” means trade secrets and other confidential and proprietary information and know-how.

“Trademarks” means United States, state and foreign trademarks, service marks, logos, slogans, trade dress and trade names, Internet domain names and any other similar designations of source of goods or services, whether registered or unregistered, and registrations and pending applications to register the foregoing, and all goodwill related to or symbolized by the foregoing.

“Transaction Documents” means this Agreement, the Assumption Agreement, the Bill of Sale[, the Transition Services Agreement] and any other agreements, instruments or documents entered into at the Closing pursuant to this Agreement.

“Transfer Taxes” means any real property transfer Tax, sales Tax, use Tax, real property recording Tax or fee, intangible Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Acquired Assets (and the perfecting or recording of evidence thereof) and not exempted under the Sale Order, by Section 1146(c) of the Bankruptcy Code or applicable state or municipal law.

“Transferred Permits” has the meaning set forth in Section 2.1(f).

[“Transition Services Agreement” means a transition services agreement substantially in the form attached hereto as Exhibit B pursuant to which Sellers and/or its designee(s) shall provide certain services to Buyer after Closing and vice versa on terms mutually acceptable to Sellers and Buyer.]²⁵

“Treasury Regulations” means the Treasury regulations promulgated under the Code.

“Union” and “Unions” have the meanings set forth in Section 5.10(a).

“Union Pension and OPEB Plans” means [(i) the Noranda Alumina LLC Hourly Pension Plan (Gramercy),]²⁶ [(ii) the Retirement Plan for Hourly Rated Employees of Noranda Aluminum Inc. (New Madrid), (iii) the Retiree Life Insurance Plan benefits available to hourly employees at the New Madrid, Missouri location,]²⁷ [(iv) the VEBA benefits available to hourly employees at the Gramercy, Louisiana location,]²⁸ [(v) the Noranda Bauxite Limited Salaried Retirement Plan, (vi) the Noranda Bauxite Limited Hourly Retirement Plan, (vii) the Noranda Bauxite Limited Pensioners Group Life Plan and (viii) the Noranda Bauxite Limited Pensioners Group Health Plan].²⁹

“WARN Act” has the meaning set forth in Section 5.10(c).

1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

Contracts, Agreements and Orders. Any reference in this Agreement to any contract, license, agreement or order means such contract, license, agreement or order as amended, supplemented or modified from time to time in accordance with the terms thereof.

²⁵ To be included depending on the Lot to be purchased and the Employees to be offered employment, and may include receipt of services from, or the provision of services to, Granges under the transition services agreement entered into as part of the “downstream” sale.

²⁶ Insert if Lot 1 is purchased.

²⁷ Insert if Lot 2 is purchased.

²⁸ Insert if Lot 1 is purchased.

²⁹ Insert if Lot 3 is purchased.

Day. Any reference in this Agreement to “days” (but not Business Days) means to calendar days.

Dollars. Any reference in this Agreement to “\$” means United States dollars.

Exhibits/Schedules. All Exhibits, Schedules and Disclosure Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit, Schedule or Disclosure Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender includes all genders, and words imparting the singular number include the plural and vice versa.

Headings. The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section,” “Article” “Schedule” or “Disclosure Schedule” are to the corresponding Section, Article, Schedule or Disclosure Schedule of this Agreement unless otherwise specified.

Herein. Words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear.

Including. The word “including” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

Law. Any reference to any law in this Agreement means such law as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time.

Lot Numbers. References to Lots by number are to the Lots as identified in Exhibit A to the Bidding Procedures.

Other. The words “to the extent” shall be interpreted to mean “to the extent (but only to the extent)”.

Person. Any reference to a Person shall include such Person’s successors and permitted assigns.

(b) No Strict Construction. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limiting the foregoing, no rule of strict

construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

ARTICLE 2

PURCHASE AND SALE

2.1 Purchase and Sale.

Subject to the entry of the Sale Order and upon the terms and subject to the conditions of this Agreement, on the Closing Date, each Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, acquire and accept from such Seller, free and clear of all Encumbrances (other than Permitted Encumbrances and Assumed Liabilities), all of such Seller's right, title and interest in, to or under the following properties, rights, claims and assets (in each case, other than the Excluded Assets), wherever situated or located, whether real, personal or mixed, whether tangible or intangible, whether identifiable or contingent, whether owned, leased, licensed, used or held for use, but in each case solely, in or relating to the Business, and whether or not reflected on the books and records of such Seller, as the same shall exist at the Closing (collectively, the "Acquired Assets"):

(a) all inventory (of any kind or nature), merchandise and goods solely related to the Business and maintained, held or stored by a Seller, whether or not prepaid, and any prepaid deposits for any of the same, other than any such items to the extent related to an Excluded Asset ("Inventory");

(b) all Equipment that is owned or leased by a Seller (to the extent that the underlying lease is an Assumed Contract) and which is used solely in the Business;

(c) subject to Section 2.5, all Assumed Contracts;

(d) all (i) Real Property (other than the Leased Real Property to the extent the Leases related thereto are not Assumed Contracts) and (ii) the Lessor Leases (to the extent that a Lessor Lease is an Assumed Contract);

(e) except to the extent prohibited by Legal Requirements, any rights of a Seller to the warranties and licenses received from manufacturers and sellers of the Equipment, Improvements or any component thereof, in each case relating solely to the Business;

(f) subject to Section 2.5(c) and obtaining the consents set forth on Section 5.2(b) of the Disclosure Schedules, all Permits held by a Seller, including those identified on Schedule 2.1(f), in each case to the extent such Permits are transferrable in accordance with their terms (the "Transferred Permits"); provided, that Schedule 2.1(f) and the definition of "Transferred Permits" shall be deemed updated and amended to exclude, without further action by either Party, any Permit that relates to an Excluded Asset;

(g) all Intellectual Property owned or licensed (to the extent licensed pursuant to an Assumed Contract) by a Seller and transferrable by such Seller solely relating to the Business (the “Acquired Intellectual Property”);

(h) all Accounts Receivable;

(i) all Pre-Paid Expenses;

(j) to the extent not prohibited by Legal Requirements and not subject to attorney-client privilege or other work product privilege, all Documents and other books and records of a Seller (financial, accounting, personnel files of Buyer Employees, and other) relating solely to the Business, and correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case, that are solely used or held for use in, or that are solely related to, the Acquired Assets, the Assumed Liabilities or the Business; provided, that such Seller shall be permitted to keep copies of all of the foregoing to the extent necessary or required by the Bankruptcy Court or in connection with the Bankruptcy Case, subject to Section 12.2;

(k) except as set forth on Schedule 2.1(k), and excluding any Avoidance Actions and Lender Claims, all claims, interests, rights, rebates, abatements, remedies, recoveries, goodwill, customer and referral relationships, other intangible property and all privileges, set-offs and benefits of a Seller, and all claims, demands, indemnification rights and causes of action, in each case arising solely under or relating solely to any of the Acquired Assets (including Acquired Intellectual Property), the Assumed Liabilities or the Business, including any such claims arising out of Assumed Contracts, express or implied warranties, representations and guarantees from suppliers, manufacturers, contractors or others to the extent relating to the operation of the Business or affecting the Equipment, Inventory or other tangible Acquired Assets;

(l) all rights of a Seller under non-disclosure or confidentiality, non-compete, or non-solicitation agreements (in each case, to the extent transferrable) relating solely to the Business;

(m) [all rights to subsidence lands associated with mining operations and all rights to the waiver of and release from subsidence liability and indemnity rights under any and all conveyances, representations and instruments or agreements of any kind and nature applicable to NBL and/or the Joint Venture’s mining activities and interests, in each case relating solely to the Business;

(n) all of the NBL’s right, title and interest in the Joint Venture and the right to any distribution and/or revenue share that NBL would otherwise be entitled to from the Joint Venture;]³⁰

³⁰ Insert if Lot 3 is purchased.

(o) all telephone, telex and telephone facsimile numbers and other directory listings relating solely to the Business or the Acquired Assets; and

(p) all assets, if any, listed on Schedule 2.1(p).

2.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, nothing herein shall be deemed to sell, transfer, assign, convey or deliver any of the Excluded Assets to Buyer, and Sellers shall retain all right, title and interest to, in and under, and all Liabilities with respect to, the Excluded Assets. For all purposes of and under this Agreement, the term “Excluded Assets” shall consist of the following items, assets and properties (whether or not such assets are otherwise described in Section 2.1):

(a) the assets, if any, listed on Schedule 2.2(a);

(b) any (i) Employee personnel files or records (other than Buyer Employee personnel files or records) and (ii) Benefit Plans (other than as explicitly provided in Section 8.5) and any assets, trust agreements, insurance policies, administrative service agreements and other contracts, files and records in respect thereof;

(c) (i) any shares of capital stock or other equity interest in or issued by any Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest in or issued by any Seller, and (ii) [except as set forth in Section 2.1(n),]³¹ any shares of capital stock or other equity interest in or issued by any entity in which any Seller holds an equity interest, or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest in or issued by any entity in which any Seller holds an equity interest;

(d) the limited liability company, partnership and corporate books and records of internal limited liability company, partnership and corporate proceedings, minute books, organizational or governing documents, stock ledgers and other records of any Seller;

(e) any documents that any Seller is required by Legal Requirements to retain and documents subject to attorney-client privilege or other work product privilege; provided, that, to the extent such documents relate to the Business, such documents shall remain subject to Section 12.2, if applicable;

(f) any Contract that is not an Assumed Contract;

(g) all insurance policies and all rights under or arising out of such insurance policies, including all rights to any pending claims;

(h) any prepaid deposits related to professional fee retainers;

³¹ Insert if Lot 3 is purchased.

(i) the Cash Consideration, all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit, bank accounts and other bank deposits, instruments and investments of any Seller;

(j) all current and prior director and officer insurance policies of any Seller and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(k) any rights, claims or causes of action of any Seller under this Agreement or any other Transaction Document;

(l) subject to Section 2.5(c), any Permits and licenses held by any Seller that are not assignable or transferrable;

(m) except as set forth on Schedule 2.1(p), any surety bonds or other financial assurances, any cash of any Seller (wherever held) that secures or otherwise supports letters of credit serving as, securing or supporting financial assurances, and any deposits, escrows, surety bonds or other financial assurances and any cash or cash equivalents securing any surety bonds or financial assurances, including in connection with any of the Transferred Permits or any Assumed Liabilities;

(n) all Avoidance Actions;

(o) all Lender Claims;

(p) any Intercompany Claims and any intercompany receivables by, between or among any Seller, any Debtor or any of their Subsidiaries;

(q) any tax assets or attributes and all rights to refunds of Taxes of any Seller;

(r) all Tax records and Tax workpapers; and

(s) all Intellectual Property utilizing the names “Noranda”, “Noralinc” “Norandal”, “Stannbl”, “Gramercyal” or “Noralm” or variations or derivations thereof, including those names set forth on Schedule 2.2(s).

2.3 Assumed Liabilities.

Subject to entry of the Sale Order, upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall, effective at the time of the Closing, assume and agree to discharge and perform when due, the Liabilities of each Seller (and only those Liabilities of Sellers) which are enumerated in this Section 2.3 (the “Assumed Liabilities”). The following Liabilities of each Seller (and only the following Liabilities) shall constitute, without duplication, the Assumed Liabilities:

(a) all Liabilities under the Assumed Contracts or in respect of the Pre-Paid Expenses;

- (b) all Cure Costs;
- (c) outstanding Trade Payables;
- (d) Liabilities arising out of the ownership or operation of the Acquired Assets or the Business for periods following the Closing Date, including with respect to workers' compensation or occupational health claims relating to any Buyer Employee arising out of an event that occurs on or after the Closing Date;
- (e) (i) the specific Liabilities of any Seller (if any) related to Employees as identified on Schedule 2.3(e) or allocated to Buyer pursuant to Section 8.5, including for the avoidance of doubt, liabilities with respect to the Collective Bargaining Agreements and the Union Pension and OPEB Plans (collectively, the "Assumed Benefit Liabilities");
- (f) all Liabilities of any Seller to the extent arising out of or relating to the Transferred Permits, including (i) compliance with performance obligations or standards under the Transferred Permits and associated Legal Requirements; and (ii) obligations to replace and/or increase bonds or other financial assurance instruments associated with the Transferred Permits;
- (g) regulatory violations and obligations on or in relation to the Transferred Permits arising post-Closing;
- (h) [all obligations of NBL to the Joint Venture under the JV Formation Documents;
- (i) all Liabilities of NBL and, to the extent provided therefor under the JV Formation Documents, the Joint Venture in respect of Reclamation and Resettlement (and, if applicable, post-mining operation Liabilities);]³²
- (j) all Liabilities to the extent arising out of or relating to: [(i) compliance with any Mining and Mine Safety Law, and any mine operating or safety compliance matters, related to the Acquired Assets or the acquired mining areas of the Business;]³³ (ii) the Acquired Assets' or the Business' compliance with Environmental Laws; and (iii) any remediation or corrective action required to resolve any environmental, safety or health conditions present at, under or migrating from the Acquired Assets, including any arising from or related to a Release resulting from the operation of the Acquired Assets, excluding, in each of the preceding cases (i)-(iii), any monetary fines and penalties imposed by any Governmental Authority for which Sellers or any of their Affiliates have received a written notice of violation or notice of claim (or other written notice of similar legal intent or meaning) on or prior to the Closing Date (whether or not disclosed on the Disclosure Schedules); and

³² Insert if Lot 3 is purchased.

³³ Insert if Lot 3 is purchased.

(k) all Liabilities with respect to any Transfer Taxes, Secured Taxes and all Taxes with respect to the Acquired Assets for any period (or portion thereof) beginning on or after the Closing Date (determined in accordance with Section 8.1(a), such Taxes, “Post-Closing Taxes”).

2.4 Excluded Liabilities.

Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of, or Liability against, any Seller, the Business or the Acquired Assets, of any kind or nature, whether or not direct or indirect, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the “Excluded Liabilities”). Without limiting the generality of the foregoing, the Excluded Liabilities shall include each of the following Liabilities of any Seller, except to the extent they are set forth in Sections 2.3(a)-2.3(k):

(a) all Liabilities with respect to any Taxes that are not expressly assumed by the Buyer pursuant to Section 2.3(k);

(b) all Liabilities with respect to Proceedings pending on or before the Closing Date or to the extent against or giving rise to Liability against the Business or the Acquired Assets prior to the Closing Date even if instituted after the Closing Date;

(c) all Liabilities to any owner or former owner of capital stock or warrants with respect to such capital stock or warrants, holder of Indebtedness for borrowed money, or current or former officer or director of, in each case, any Seller in such capacities;

(d) except as expressly provided herein, all Liabilities with respect to any Excluded Asset;

(e) other than Trade Payables, all Liabilities for: (i) costs and expenses incurred or owed in connection with the administration of the Bankruptcy Case; and (ii) all costs and expenses incurred by any Seller in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement;

(f) except as set forth in Section 2.3(d), all workers’ compensation claims and occupational health claims related to the Acquired Assets, including and with respect to Buyer Employees and former employees of any Seller who worked or who were employed at the Acquired Assets; and

(g) except for the Assumed Benefit Liabilities, (i) all Liabilities with respect to Employees, former Employees (or their representatives or beneficiaries) or employees of any ERISA Affiliate, for any action or inaction of Parent or any Seller (or any of their respective predecessors) occurring prior to or on the Closing Date, including with respect to vacation, payroll, sick leave, unemployment benefits, retirement benefits, pension benefits, employee stock option, equity compensation, employee stock purchase, or profit sharing plans, health care and other welfare plans or benefits (including COBRA), or any other employee plans or arrangements or benefits or other compensation of any kind to any employee, and Liabilities

of any Seller and its predecessors pursuant to the WARN Act; (ii) any Liability arising under any employment agreement, severance, retention or termination agreement or other similar arrangement with any employee, consultant or contractor (or its representatives) of Parent or any Seller; or (iii) any Liability or other obligations of any Seller or any ERISA Affiliate arising under, relating to or with respect to any Benefit Plan or Multiemployer Plan;

(h) all Liabilities (other than Assumed Liabilities) accruing, arising out of, or relating to any federal, state or local investigations of any Seller or any Employee, agents, vendors or representatives of any Seller arising out of actions prior to the Closing (other than rights of setoff and recoupment claims); and

(i) all Intercompany Claims.

2.5 Assignment and Assumption of Contracts.

(a)

(i) Schedule 2.5(a)(1) sets forth a list of all executory Contracts (including Leases and Lessor Leases) solely relating to the Business or the Acquired Assets to which a Seller is party (the “Available Contracts”), which Schedule 2.5(a)(1) may be updated from time to time to add or remove any Contracts inadvertently included or excluded from such schedule. Schedule 2.5(a)(2) sets forth a list of all executory Contracts solely relating to the Business or the Acquired Assets to which a Seller is party, but which such Seller is retaining (the “Retained Contracts”), which Schedule 2.5(a)(2) may be updated by Sellers from time to time until two (2) days prior to the Closing Date to add or remove any Contracts inadvertently included or excluded from such schedule. All Contracts of Sellers that are listed on Schedule 2.5(a)(2) shall not be considered Available Contracts.] On or before the Bid Deadline (as defined in the Bidding Procedures), Buyer shall use reasonable efforts to designate on Schedule 2.5(a)(3) which Available Contracts Buyer wishes to “Assume” (the “Assumed Contracts”), provided, that Buyer shall update Schedule 2.5(a)(3) prior to entry of the Sale Order and shall finalize Schedule 2.5(a)(3) prior to the Closing (the “Determination Date”). All Contracts of Sellers that are listed on Schedule 2.5(a)(1) and which Buyer does not designate on Schedule 2.5(a)(3) for assumption shall not be considered Assumed Contracts or Acquired Assets and shall automatically be deemed “Excluded Contracts” (and for the avoidance of doubt, Buyer shall not be responsible for any related Cure Costs); provided, however, that if an Available Contract is subject to a cure dispute or other dispute as to the assumption or assignment of such Available Contract that has not been resolved to the mutual satisfaction of Buyer and Sellers prior to the Closing Date, then the Determination Date shall be extended (but only with respect to such Available Contract) to no later than the earlier of (A) the date on which such dispute has been resolved to the mutual satisfaction of Buyer and Sellers, (B) the date on which such Available Contract is deemed rejected by operation of 11 U.S.C. § 365(d)(4) and (C) the date required by the Bankruptcy Court and set forth in either the Bidding Procedures Order or the Sale Order (the “Extended Contract Period”), but subject in all respects to the requirements of such Orders. If such Available Contract is not expressly assumed by Buyer in writing by the end of such Extended Contract Period, such Available Contract

shall be automatically deemed an Excluded Contract. Buyer shall be responsible for any obligations or Liabilities arising during any Extended Contract Period relating to any Available Contract that has not been assumed or rejected as of the Determination Date as provided in this Section 2.5(a). For the avoidance of doubt, except as set forth in Section 2.3 and other than as provided in the preceding sentence, Buyer shall not assume or otherwise have any Liability with respect to any Excluded Contract.

(ii) The applicable Seller, and Buyer, shall use commercially reasonable efforts to assign, or cause to be assigned, the Assumed Contracts to Buyer, including taking all reasonable and necessary actions required by the Bankruptcy Court to obtain an Order containing a finding that the proposed assumption and assignment of the Assumed Contracts to Buyer satisfies all applicable requirements of Section 365 of the Bankruptcy Code. Buyer shall use commercially reasonable efforts to comply with all of the requirements of Section 365 of the Bankruptcy Code necessary to permit such assumption and assignment.

(iii) If, prior to the Closing Date, there are Available Contracts that have not been designated as an Assumed Contract or an Excluded Contract, Sellers shall not assume or reject any such Available Contract pursuant to Section 365 of the Bankruptcy Code and any order of the Bankruptcy Court until the earlier of (x) the date Buyer so directs Sellers and (y) the end of the Extended Contract Period, if applicable (which assumption shall be at Buyer's sole cost and expense); provided, that Buyer shall be responsible for any obligations or Liabilities arising during any Extended Contract Period.

(iv) At the Closing, (x) Sellers shall, pursuant to the Sale Order and the Assumption Agreement, assign, or cause to be assigned, to Buyer (the consideration for which is included in the Purchase Price) each of the Assumed Contracts that is capable of being assigned and (y) Buyer shall pay promptly all Cure Costs (if any) in connection with such assignment (as agreed to among Buyer and Sellers or as determined by the Bankruptcy Court) and assume and perform and discharge the Assumed Liabilities (if any) under the Assumed Contracts, pursuant to the Sale Order and the Assumption Agreement.

(b) Previously Omitted Contracts.

(i) If, prior to or following Closing, it is discovered that a Contract should have been listed on Schedule 2.5(a)(1) but was not listed on Schedule 2.5(a)(1) and has not been rejected by a Seller (any such Contract, a "Previously Omitted Contract"), Sellers shall, promptly following the discovery thereof (but in no event later than three (3) Business Days following the discovery thereof), notify Buyer in writing of such Previously Omitted Contract and all Cure Costs (if any) for such Previously Omitted Contract. Buyer shall thereafter deliver written notice to Sellers, no later than five (5) Business Days following notification of such Previously Omitted Contract from Sellers, designating such Previously Omitted Contract as "Assumed" or "Rejected" (a "Previously Omitted Contract Designation"). A Previously Omitted Contract designated in accordance with this Section 2.5(b)(i) as "Rejected," or

with respect to which Buyer fails to timely deliver a Previously Omitted Contract Designation, shall be an Excluded Contract.

(ii) If Buyer designates a Previously Omitted Contract as “Assumed” in accordance with Section 2.5(b)(i), the applicable Seller shall serve a notice (the “Previously Omitted Contract Notice”) on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Costs with respect to such Previously Omitted Contract and such Seller’s intention to assume and assign such Previously Omitted Contract in accordance with this Section 2.5. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with at least fourteen (14) days (or as otherwise required by the Bid Procedures) to object, in writing to such Seller and Buyer, to the Cure Costs or the assumption and assignment of its Contract. If the counterparties, such Seller and Buyer are unable to reach a consensual resolution with respect to the objection, Sellers shall seek an expedited hearing before the Bankruptcy Court to determine the Cure Costs and approve the assumption. If no objection is served on Sellers and Buyer, Sellers shall obtain an order of the Bankruptcy Court fixing the Cure Costs and approving the assumption of the Previously Omitted Contract. Buyer shall be responsible for all Cure Costs relating to such “Assumed” Previously Omitted Contracts and for any obligations or Liabilities relating to such “Assumed” Previously Omitted Contracts arising during the Extended Contract Period.

(c) Non-Assignment of Contracts and Permits. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Contract or any Permit, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempt at assignment or transfer thereof, without the consent or approval required or necessary for such assignment or transfer, would constitute a violation of a Legal Requirement or a breach of such Contract or Permit. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code and the commercially reasonable efforts of Sellers, such consent or approval is required but not obtained with respect to an Assumed Contract or a Permit, neither Sellers nor Buyer shall be in breach of this Agreement nor shall the Purchase Price be adjusted nor shall the Closing be delayed in respect of the Assumed Contracts or the Permits; provided, however, if the Closing occurs, then, with respect to any Assumed Contract or Permit for which consent or approval is required but not obtained, from and after the Closing for a period of no more than six (6) months, Sellers shall reasonably cooperate, at Buyer’s sole cost and expense, with Buyer in any reasonable arrangement that Buyer may request to provide Buyer with all of the benefits of, or under, the applicable Assumed Contract or Transferred Permit, including enforcement for the benefit of Buyer of any and all rights of Sellers against any party to the applicable Assumed Contract or Transferred Permit arising out of the breach or cancellation thereof by such party; provided, however, to the extent that any such arrangement has been made to provide Buyer with the benefits of, or under, the applicable Assumed Contract or Transferred Permit, from and after the Closing, Buyer shall be responsible for, and shall promptly pay and perform all payment and other obligations under such Assumed Contract or Permit (all of which shall constitute, and shall be deemed to be, Assumed Liabilities hereunder) to the same extent as if such Assumed Contract or Permit had been assigned or transferred at the Closing with respect to Assumed Contracts and Permits, and at such applicable later date specified in this Section 2.5(c) with respect to any

additional Assumed Contracts. Any assignment to Buyer of any Assumed Contract or Permit that shall, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, require the consent or approval of any Person for such assignment as aforesaid shall be made subject to such consent or approval being obtained. Notwithstanding anything to the contrary contained herein, Buyer shall reimburse, indemnify and hold harmless Sellers and/or their Affiliates from any and all Liabilities incurred by Sellers and/or their Affiliates in connection with any action taken by Sellers at Buyer's or its Affiliates' request pursuant to this Section 2.5(c).

2.6 Further Assurances.

(a) Except as otherwise provided herein and subject to the terms and conditions of this Agreement, the Bankruptcy Code and any orders of the Bankruptcy Court, from and after the Execution Date, Sellers and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable Legal Requirements to consummate the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement, in each case, after giving effect to the Sale Order.

(b) At and after the Closing, Sellers shall execute and deliver to Buyer such further instruments and certificates as reasonably requested by Buyer and Buyer will reimburse Sellers for any out-of-pocket expenses incurred by Sellers in connection with actions taken by Sellers (i) to vest, perfect or confirm ownership (of record or otherwise) in Buyer, of Sellers' right, title or interest in, to or under any or all of the Acquired Assets and Business, including the Real Property, free and clear of all Encumbrances (other than Permitted Encumbrances and Assumed Liabilities) or (ii) to otherwise effectuate the purposes and intent of this Agreement and the other Transaction Documents. From and after the Closing Date, Buyer will reimburse Sellers for any out-of-pocket expenses incurred by Sellers in connection with actions taken by Sellers and each of the Parties shall take, or cause to be taken, and cooperate with the other Parties to take, or cause to be taken, all actions, do or cause to be done all things as may be reasonably requested by the other Parties in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in Buyer or otherwise to carry out this Agreement, and shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances, and as may be required to consummate the transactions contemplated by this Agreement, it being specifically understood that, notwithstanding anything to the contrary herein, no Seller shall have any obligation to (i) record or pay any recording fees and Taxes in connection with the foregoing (except to the extent Buyer agrees to reimburse Sellers for any out-of-pocket expenses incurred by Sellers in connection with such recordation or payment), or (ii) pay any title insurance fee or premium in connection with any title insurance commitment or policy Buyer may obtain, in each case, included any related costs and expenses (except to the extent Buyer agrees to reimburse Sellers for any out-of-pocket expenses incurred by Sellers in connection with such commitment or policy).

ARTICLE 3

PURCHASE PRICE

3.1 Consideration.

The aggregate consideration (the “Purchase Price”) for the purchase, sale, assignment and conveyance of the Acquired Assets shall consist of:

(a) cash (the “Cash Consideration”) in an amount equal to \$[•], including the Good Faith Deposit provided by Buyer to Sellers under the Bidding Procedures, but subject to adjustment as provided in Section 3.2; and

(b) the assumption by Buyer of the Assumed Liabilities from Sellers, including the assumption of the obligation to pay to the applicable counterparties of the applicable Assumed Contracts the Cure Costs payable by Buyer under Section 2.5.

3.2 Purchase Price Adjustment.

(a) At least two (2) Business Days prior to the Closing Date, Sellers shall prepare and deliver to Buyer a certificate executed by an executive officer of Sellers (the “Pre-Closing Statement”) setting forth Sellers’ good faith estimates of the Net Working Capital (the “Estimated Working Capital”) and the resulting Estimated Net Working Capital Adjustment calculated in accordance with this Section 3.2, together with supporting documentation for such estimates and any additional information reasonably requested by Buyer. The Pre-Closing Statement shall be prepared in accordance with this Agreement and the Accounting Standards. If the Estimated Net Working Capital Adjustment is a positive number, the Cash Consideration payable by Buyer at Closing pursuant to Section 4.2(a) shall be increased by the Estimated Net Working Capital Adjustment. If the Estimated Net Working Capital Adjustment is a negative number, the Cash Consideration payable by Buyer at Closing pursuant to Section 4.2(a) shall be decreased by the Estimated Net Working Capital Adjustment.

(b) Not later than sixty (60) days after the Closing Date, Buyer shall prepare and deliver to Sellers a certificate executed by an executive officer of Buyer (the “Closing Statement”) setting forth Buyer’s determination of the Net Working Capital and the resulting Net Working Capital Adjustment calculated in accordance with this Section 3.2, together with supporting documentation for such estimates and any additional information reasonably requested by Sellers. The Closing Statement shall be prepared in accordance with this Agreement and the Accounting Standards.

(c) Within thirty (30) days after Sellers’ receipt of the Closing Statement, Sellers shall deliver to Buyer a written statement either accepting the Closing Statement or specifying any objections thereto. During such thirty (30) day period, Buyer shall reasonably cooperate with Sellers and their agents and advisors in connection with review of the Closing Statement by Sellers and their agents and advisors by promptly providing all information and by providing access to all relevant books, records and employees of Buyer as are reasonably requested by Sellers or any of their agents or advisors in connection with their review of the Closing Statement and the calculation of the Net Working Capital and the resulting Net Working

Capital Adjustment. If Sellers do not deliver any such written statement accepting the Closing Statement or specifying any objections thereto within such thirty (30) day period, then the Closing Statement shall become final and binding upon all Parties. If Sellers delivers a written statement specifying objections within such period, then the Parties shall negotiate in good faith for a period of thirty (30) days following Buyer's receipt of such objections to resolve any such objections. If the Parties are able to resolve all of Sellers' objections during such thirty (30) day period, then the Closing Statement, as revised in accordance with such resolution, shall become final and binding upon all Parties. If the Parties are not able to resolve all such objections during such thirty (30) day period, then any remaining disputes shall be referred for resolution to a firm of independent nationally recognized accountants reasonably chosen and mutually accepted by both Parties (the "Accounting Referee"). The Accounting Referee shall be instructed to resolve any such disputes within thirty (30) days after its appointment. The resolution of such disputes by the Accounting Referee shall be (i) set forth in writing, (ii) determined in accordance with this Agreement, (iii) within the range of dispute between Buyer and Sellers and (iv) binding upon all Parties, absent manifest error. Upon delivery of such resolution by the Accounting Referee, the Closing Statement, as modified in accordance with such resolution, shall become final and binding upon all Parties. The fees, costs and expenses relating to the Accounting Referee shall be borne jointly by Buyer and Seller in inverse proportion to the extent to which the Accounting Referee agrees with Buyer or Sellers, respectively, with respect to any matter submitted to the Accounting Referee for resolution.

(d) (i) If Sellers fail to deliver a written statement specifying objections in accordance with Section 3.2(c), the Net Working Capital Adjustment shall be as set forth in the Closing Statement or (ii) if Sellers deliver a written statement of objection, the Net Working Capital Adjustment as mutually agreed by negotiation of the Parties or as resolved by submission to the Accounting Referee, as the case may be, pursuant to Section 3.2(c).

(e) If the Net Working Capital Adjustment is a positive number, then Buyer shall promptly (but in any event within three (3) Business Days following the determination thereof) deliver to Sellers such amount by wire transfer of immediately available funds to an account or accounts designated in writing by Sellers. If the Net Working Capital Adjustment is a negative number, then Sellers shall promptly (but in any event within three (3) Business Days following determination thereof) deliver to Buyer such shortfall by wire transfer of immediately available funds to one or more accounts designated in writing by Buyer. All payments made pursuant to this Section 3.2 shall be treated by all Parties for Tax purposes as adjustments to the Purchase Price.

3.3 Allocation of Purchase Price.

(a) Buyer and Sellers agree that, for Buyer's and Sellers' respective federal, state and local income Tax purposes, the Purchase Price, the Assumed Liabilities and other relevant items shall be allocated among the Acquired Assets as determined pursuant to this Section 3.3.

(b) Within one hundred and twenty (120) days following the Closing Date or, if later, within 30 days of the final resolution of Net Working Capital, pursuant to Section 3.2, Sellers shall prepare and deliver to Buyer a statement allocating the sum of the

Purchase Price, the Assumed Liabilities and other relevant items among such Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (each such statement, an “Allocation Statement”).

(c) Buyer shall have a period of thirty (30) Business Days after the delivery of an Allocation Statement (the “Response Period”) to present in writing to Sellers notice of any objections that Buyer may have to the allocations set forth therein (an “Objections Notice”). Unless Buyer timely objects, such Allocation Statement shall be binding on the Parties without further adjustment.

(d) If Buyer shall raise any objections within the Response Period, Buyer and Sellers shall negotiate in good faith and use their commercially reasonable efforts to resolve such dispute. If the Parties fail to agree within fifteen (15) days after the delivery of the Objections Notice, then the disputed items shall be resolved by the Accounting Referee, whose determination shall be final and binding on the Parties. The Accounting Referee shall resolve the dispute within thirty (30) days after the item has been referred to it. The fees, costs and expenses relating to the Accounting Referee shall be borne jointly by Buyer and Sellers in inverse proportion to the extent to which the Accounting Referee agrees with Buyer or Sellers, respectively, with respect to any matter submitted to the Accounting Referee for resolution.

(e) Unless otherwise required by Legal Requirements, the Internal Revenue Service (the “IRS”) or any other Taxing authority, the allocation of the Purchase Price pursuant to such Allocation Statement (if applicable, as modified by Sections 3.3(c) and 3.3(d) hereof) shall be final and binding on the Parties, and the Parties shall follow such Allocation Statement for purposes of filing IRS Form 8594 (and any supplements to such form) and all other Tax Returns, and shall not take any position inconsistent therewith in any communication with any Taxing authority. If the IRS or any other Taxing authority proposes a different allocation, Sellers or Buyer, as the case may be, shall promptly notify the other Party of such proposed allocation. Sellers or Buyer, as the case may be, shall provide the other Party with such information and shall take such actions (including executing documents and powers of attorney in connection with such proceedings) as may be reasonably requested by such other Party to carry out the purposes of this Section 3.3.

3.4 Withholding.

Buyer shall be entitled to deduct and withhold from the Purchase Price otherwise payable pursuant to this Agreement to Sellers such amounts as Buyer is required to deduct and withhold under applicable Legal Requirements. To the extent that amounts are so deducted, withheld and paid to the appropriate Governmental Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to Sellers. Notwithstanding the foregoing, Buyer shall provide written notification of Buyer’s intent to withhold at least two (2) Business Days prior to such withholding being made (except for withholdings required due to Sellers’ failure to deliver the form described in Section 4.3(d)) and use reasonable efforts to mitigate the requirement to withhold.

ARTICLE 4

CLOSING AND DELIVERIES

4.1 Closing Date.

Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities (other than those pertaining to Previously Omitted Contracts pursuant to Section 2.5(b) and Assumed Contracts subject to a cure dispute pursuant to Section 2.5(a)(i) contemplated hereby) (the “Closing”) shall take place at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019, no later than three (3) Business Days following the date on which all the conditions set forth in Article 9 and Article 10 have been satisfied or (if permissible) waived by the Party entitled to waive such condition (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or on such other date and time as Sellers and Buyer may mutually agree in writing. The date and time at which the Closing actually occurs is hereinafter referred to as the “Closing Date.” Upon consummation of the Closing, the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities hereunder, and the Closing, shall be deemed to have occurred as of 12:01 a.m. (Missouri time) on the Closing Date.

4.2 Buyer’s Deliveries.

At the Closing, Buyer shall deliver (and/or cause one or more of its Affiliates to deliver) to Sellers:

(a) the Cash Consideration, as adjusted pursuant to Section 3.2(a), less the Good Faith Deposit, by wire transfer of immediately available funds to the accounts designated by Sellers prior to the Closing Date;

(b) the Assumption Agreement, duly executed by Buyer;

(c) [the Transition Services Agreement, duly executed by Buyer;]

(d) each other Transaction Document to which Buyer is a party, duly executed by Buyer;

(e) [for purposes of transferring NBL’s interest in the Joint Venture to Buyer, the documents in substantially the form attached hereto as Schedule 4.2(e), duly executed by Buyer;]³⁴

(f) the certificates of Buyer to be received by Sellers pursuant to Sections 10.1 and 10.2; and

³⁴ Insert if Lot 3 is purchased.

(g) such other documents as Sellers may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

4.3 Sellers' Deliveries.

At the Closing, Sellers shall deliver (and/or cause one or more of its Affiliates to deliver) to Buyer:

(a) the Bills of Sale, Deeds and the Assumption Agreement (in each case, relating to the Acquired Assets), [the Transition Services Agreement,] and each other Transaction Document to which any Seller is a party, duly executed by the applicable Seller;

(b) a certified copy of the Sale Order;

(c) the certificates of Sellers to be received by Buyer pursuant to Sections 9.1 and 9.2;

(d) certificates executed by each Seller, in the form prescribed under Treasury Regulation Section 1.1445-2, that either (a) such Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code or that (b) the Acquired Assets acquired from such Seller do not constitute a U.S. real property interest within the meaning of section 897(c) of the Code; [and]

(e) [for purposes of transferring NBL's interest in the Joint Venture to Buyer, the documents in substantially the form attached hereto as Schedule 4.3(e), duly executed by Seller; and]³⁵

(f) such other documents as Buyer may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Buyer as of the date hereof as follows, except as disclosed in the Disclosure Schedules or contained in the Incorporated Information:

5.1 Organization and Good Standing.

Each Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Subject to the applicable provisions of the Bankruptcy Code, each Seller has all requisite corporate or limited liability company power and authority to own or lease and to operate and use its properties and to carry on its business as now

³⁵ Insert if Lot 3 is purchased.

conducted. Each Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction where the character of its Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.2 Authority; Validity; Consents.

(a) Each Seller has, subject to entry of the Sale Order, the requisite corporate or limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which such Seller is a party and to consummate the transactions contemplated hereby and thereby, and, subject to entry of the Sale Order, the execution, delivery and performance of this Agreement and such other Transaction Documents by such Seller and the consummation by such Seller of the transactions contemplated herein and therein have been duly and validly authorized by all requisite corporate or limited liability company action on the part of such Seller. Subject to entry of the Sale Order, this Agreement has been duly and validly executed and delivered by each Seller and each other Transaction Document required to be executed and delivered by a Seller at the Closing will be duly and validly executed and delivered by such Seller at the Closing. Subject to entry of the Sale Order, this Agreement and the other Transaction Documents to which a Seller is (or will be) a party constitute (or, when entered into, will constitute), with respect to such Seller, the legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity.

(b) Subject to entry of the Sale Order, except (i) as may be required to comply with the HSR Act and the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets or the Business, (ii) for entry of the Sale Order, (iii) for notices, filings and consents required in connection with the Bankruptcy Case, including the requirements of the Bidding Procedures Order, and (iv) for the notices, filings and consents set forth on Section 5.2(b) of the Disclosure Schedules, Sellers are not required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from, any Governmental Authority in connection with the execution and delivery of this Agreement and the other Transaction Documents to which a Seller is (or will be) a party or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, registrations, declarations or filings, the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.3 No Conflict.

Except as a result of the Bankruptcy Case, none of the execution and delivery by any Seller of this Agreement or any other Transaction Document to which it is (or will be) a party or, after giving effect to the Sale Order, the consummation of the transactions contemplated hereby or thereby or, after giving effect to the Sale Order and the Bidding Procedures Order, compliance by it with any of the provisions hereof or thereof will, (a) conflict with or result in a

violation of (i) any provision of the certificate of incorporation or bylaws (or other organizational or governing documents) of such Seller or (ii) any material Order binding upon such Seller or by which the Business or any Acquired Assets are subject or bound, (b) (i) violate, conflict with, or result in a material breach of any of the terms of, or constitute a material default under, or give rise to any right of termination, modification, cancellation or acceleration under any material license or Permit held by any Seller, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Authority or (ii) result in a material breach of or constitute a default under or give rise to any right of termination, modification, cancellation or acceleration under any Material Contract which is an Available Contract, or (c) result in the creation of any Encumbrance (other than a Permitted Encumbrance or Assumed Liability) upon the properties or assets of such Seller being sold or transferred hereunder.

5.4 Real Property.

(a) Owned Real Property. Section 5.4(a) of the Disclosure Schedules sets forth an accurate and complete list of the Owned Real Property. Except for Permitted Encumbrances, at the Closing Sellers will have good and marketable title in the Owned Real Property set forth on Section 5.4(a) of the Disclosure Schedules. Except for the Lessor Leases, none of the Owned Real Property is subject to any lease or grant to any third-party of any right to the use, purchase, occupancy or enjoyment of such Owned Real Property or any material portion thereof required to conduct the Business. Except for Permitted Encumbrances and the applicable terms of Permits held by Sellers, at the Closing the Owned Real Property will not be subject to any Encumbrances (other than liens that will be removed pursuant to the Sale Order), which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business. There are no pending or, to Sellers' Knowledge, threatened condemnation proceedings relating to any of the Owned Real Property except those which do not materially impair or restrict the current use of the Owned Real Property subject thereto. There are no outstanding options or rights of first refusal to purchase any of the Owned Real Property or any interest therein.

(b) Lessor Leases. Section 5.4(b) of the Disclosure Schedules lists, as of the Execution Date, all material unexpired leases, subleases, licenses, sublicenses, occupancy or other agreements whereby any Seller leases, subleases, licenses or grants an interest in any Owned Real Property or Leased Real Property to a third party (the "Lessor Leases"). Sellers have made available, to the extent that they are in any Seller's possession or control, true, complete and correct copies of the Lessor Leases to Buyer, including any amendments thereto. Other than as a result of the Bankruptcy Case, no Seller is in material breach of or in default under any Lessor Leases to which it is party and, to Sellers' Knowledge, no other party to any Lessor Lease has given any Seller written notice of or made a claim with respect to any material breach or material default by such Seller thereunder (other than as a result of the Bankruptcy Case).

(c) Leased Real Property. Section 5.4(c) of the Disclosure Schedules contains a list of all Leased Real Property held or used for, or necessary to the operation of the Business. Sellers have made available, to the extent that they are in any Seller's possession or control, true and complete copies of all Leases to Buyer. Other than as a result of the Bankruptcy Case, no Seller is in material (x) breach of any material term or (y) default under any Lease to

which it is party and, to Sellers' Knowledge, no other party to any Lease has given any Seller written notice of or made a claim with respect to any material breach or material default thereunder. To Sellers' Knowledge or other than as a result of the Bankruptcy Case, there are no conditions that currently exist or which with the passage of time will result in a material default or material breach of any material term by any party to a Lease. To Sellers' Knowledge, none of the Leased Real Property is subject to any sublease or grant to any third-party of any right to the use, occupancy or enjoyment of the Leased Real Property or any portion thereof that would materially impair the use of the Leased Real Property in the operation of the Business. No Seller has received written notice of any pending or threatened condemnation or other proceedings or claims relating to such Seller's interest in any of the Leased Real Property, except those which do not materially impair or restrict the current use of the Leased Real Properties subject thereto.

5.5 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) with respect to the Real Properties and the Business, Sellers are not the subject of any outstanding material liability or obligation under or pursuant to Environmental Laws nor has any Seller received any written notice, complaint or inquiry from any Governmental Authority or any other Person respecting any such liability or obligation, (b) there is no Proceeding pending, or, to the Knowledge of Sellers, threatened that would reasonably be expected to result in Sellers incurring any material Liability pursuant to any applicable Environmental Law in connection with the Real Properties or the Business, including without limitation, any such Liability relating to the treatment, storage, recycling or handling of any Hazardous Substances by or on behalf of Sellers at the Real Properties (c) there has been no Release of Hazardous Substances and no Person has been exposed to Hazardous Substances at, to, on, under or from the Real Properties in a manner that would reasonably be expected to result in material Liability under Environmental Laws, (d) Sellers are in material compliance with Environmental Laws with respect to the Business and the Real Properties, (e) Sellers have obtained, maintain and are in material compliance with all Permits which are required under or pursuant to Environmental Laws (the "Environmental Permits") for the operation of the Real Properties and the Business, all such Environmental Permits are valid and in good standing, and Sellers have not been advised by any Governmental Authority of any planned revocation of or adverse modification to such Environmental Permit.

5.6 Title to Acquired Assets.

At the Closing, Sellers will have, in all material respects, good and valid title to, or, in the case of property leased or licensed by Sellers, a valid leasehold or licensed interest in, all of the Acquired Assets, and shall transfer the Acquired Assets free and clear of all Encumbrances, except (a) for the Assumed Liabilities and (b) for Permitted Encumbrances.

5.7 Taxes.

All material Taxes relating to the Acquired Assets that are due and payable have been timely paid to the extent that payment thereof is not stayed as a result of the Bankruptcy Case. The representation in this Section 5.7 is the exclusive representation of Sellers with respect to Taxes.

5.8 Legal Proceedings.

Except for the Bankruptcy Case (and proceedings related thereto), there is no Proceeding or Order pending or, to Sellers' Knowledge, threatened in writing against or related to the Business, by or before any arbitrator or Governmental Authority, which would reasonably be expected to materially and adversely affect the operation of the Business from and after the Closing.

5.9 Compliance with Legal Requirements; Permits.

(a) Except with respect to Permits required under any Environmental Law, which Permits are addressed in Section 5.5, Sellers hold all of the Permits necessary for the current operation and conduct of the Business and the Acquired Assets in compliance with Legal Requirements, other than those Permits the absence of which would not be material to the operation of the Business from and after the Closing. The Permits set forth on Section 5.9(a) of the Disclosure Schedules are all of the Permits held by Sellers with respect to the current operation and conduct of the Business, the absence of which would be reasonably expected to materially and adversely affect the operation of the Business from and after the Closing.

(b) Except (x) with respect to compliance with Environmental Law, which is addressed in Section 5.5, (y) for fully paid, discharged or finally settled citations and notices of violations issued by Governmental Authorities and (z) as would not reasonably be expected to materially and adversely affect to the operation of the Business, Sellers have, since December 31, 2013 conducted the Business in accordance, in all material respects, with all Legal Requirements, Orders and Permits.

(c) Except with respect to actions under Environmental Law, which are covered under Section 5.5, (y) for fully paid, discharged or finally settled citations and notices of violations issued by Governmental Authorities, and (z) as would not reasonably be expected to materially and adversely affect the operation of the Business, neither Sellers, nor, to Sellers' Knowledge, any of their Representatives have received, since December 31, 2013, any written notice from a Governmental Authority that alleges that the Business is not in compliance with any Legal Requirement, Order or Permit applicable to the Business or the operations or properties of the Business or that states the intention on the part of any issuing Governmental Authority to revoke, cancel, suspend or modify any Permit necessary for the current operation and conduct of the Business (except with respect to regular periodic expirations and renewals thereof). Except as would not reasonably be expected to materially and adversely affect the operation of the Business: (i) since December 31, 2013, Sellers have not had any Permits that are necessary for the operation and conduct of the Business appealed, denied, revoked, restricted or suspended; and (ii) Sellers are not currently a party to any proceedings involving the possible appeal, denial, revocation, restriction or suspension of any Permits that are necessary for the current operation and conduct of the Business or any of the privileges granted thereunder (except where the obligation to hold such a Permit is being contested in good faith by appropriate proceedings diligently conducted or is excused by the Bankruptcy Court).

5.10 Labor Matters.

(a) No Seller is party to or subject to any collective bargaining agreement, works council agreement, labor union contract, trade union agreement, or other similar agreement (each a “Collective Bargaining Agreement”) with any union, works council, or labor organization (each a “Union” and collectively “Unions”).

(b) To Seller’s Knowledge, since December 31, 2013, other than pursuant to procedures established in connection with the Bankruptcy Case, (i) no Union or group of Employees or former Employees has organized any employees for purposes of collective bargaining, sought to bargain collectively with any Seller, made a demand for recognition or certification as an employee representative for purposes of collective bargaining or filed a petition for recognition with any Governmental Authority; (ii) as of the date hereof, no Collective Bargaining Agreement is being negotiated by any Seller, other than pursuant to procedures established in connection with the Bankruptcy Case; (iii) there have been no material strikes, lockouts, slowdowns, work stoppages, boycotts, handbilling, picketing, walkouts, demonstrations, leafleting, sit-ins, sick-outs, or other material forms of organized labor disruption with respect to any Seller; (iv) there are no unfair labor practice charges pending, or to the Seller’s Knowledge, threatened with respect to the Business; and (v) there are no grievances filed by any Union or by any employee represented by any Union pending or, to Seller’s Knowledge, threatened, with respect to the Business.

(c) Since December 31, 2013, Sellers have not failed to provide advance notice of layoffs or terminations as required by, or incurred any material Liability under, the Worker Adjustment and Retraining Notification Act of 1988, and including any similar state or local Legal Requirement (the “WARN Act”), or any applicable Legal Requirement for employees outside the United States regarding the termination or layoff of employees. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or pursuant to procedures established in connection with the Bankruptcy Case, (i) since December 31, 2013, Sellers have been in compliance with all applicable Legal Requirements relating to labor and employment, including all Legal Requirements relating to employment practices; the hiring, promotion, assignment, and termination of employees; discrimination; equal employment opportunities; disability; labor relations; wages and hours; FLSA, classification of independent contractors, hours of work; payment of wages; immigration; workers’ compensation; employee benefits; background and credit checks; working conditions; occupational safety and health; family and medical leave; employee terminations; and data privacy and data protection; (ii) there are no pending, or to Sellers’ Knowledge, threatened, Proceedings against any Seller brought by or on behalf of any applicant for employment, any current or former Employee, any person alleging to be a current or former employee, any representative, agent, consultant, independent contractor, subcontractor, or leased employee, volunteer, or “temp” of such Seller, or any group or class of the foregoing, or any Governmental Authority, alleging violation of any labor or employment Legal Requirements, breach of any Collective Bargaining Agreement, breach of any express or implied contract of employment, wrongful termination of employment, or any other discriminatory, wrongful, or tortious conduct in connection with the employment relationship; (iii) each of the Employees has all work permits, immigration permits, visas, or other authorizations required by any Legal Requirement for such

Employee given the duties and nature of such Employee's employment; and (iv) no individual has been improperly excluded from, or wrongly denied benefits under, any Benefit Plan.

5.11 Employee Benefits.

(a) (i) No Benefit Plan (or any benefit plans, programs or arrangements of an ERISA Affiliate that would be a Benefit Plan if such ERISA Affiliate were a Seller) (A) is, or has been within the past six (6) years, a Title IV Plan or subject to Section 412 of the Code; (B) is maintained by more than one employer within the meaning of Section 413(c) of the Code; (C) is subject to Sections 4063 or 4064 of ERISA; (ii) no Benefit Plan is (A) a "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA; or (B) an "employee pension benefit plan" (within the meaning of Section 3(2) of ERISA) that is not intended to be qualified under Section 401(a) of the Code; and (iii) neither Sellers nor any of their respective ERISA Affiliates contribute to, or are obligated to contribute to, or within the six (6) years preceding this Agreement contributed to or were obligated to contribute to, a Multiemployer Plan.

(b) Since December 31, 2013, there has been no "reportable event" (as defined in Section 4043 of ERISA and the regulations thereunder) with respect to any Title IV Plan set forth on Section 5.11(a) of the Disclosure Schedules that would require the giving of notice to the Pension Benefit Guaranty Corporation (the "PBGC") under Section 4041(c)(3)(C) or 4063(a) or 4043 of ERISA.

(c) (i) No Seller has terminated any Title IV Plan within the last six (6) years or incurred any outstanding liability under Section 4062 of ERISA to the PBGC, or to a trustee appointed under Section 4042 of ERISA; (ii) all premiums due the PBGC with respect to the Title IV Plans set forth on Section 5.11(a) of the Disclosure Schedules have been paid; (iii) no Seller has filed a notice of intent to terminate any Title IV Plan set forth on Section 5.11(a) of the Disclosure Schedules and has not adopted any amendment to treat such Title IV Plan as terminated; (iv) the PBGC has not instituted, or to Sellers' Knowledge, threatened to institute, proceedings to treat any Title IV Plan set forth on Section 5.11(a) of the Disclosure Schedules as terminated; and (v) no event has occurred or circumstance exists that may constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan set forth on Section 5.11(a) of the Disclosure Schedules.

(d) No Seller nor any ERISA Affiliate of such Seller has, within the past six (6) years, withdrawn from a Multiemployer Plan in a "complete withdrawal" or a "partial withdrawal" as defined in Sections 4203 and 4205 of ERISA, respectively, so as to result in an unsatisfied liability, contingent or otherwise (including the obligations pursuant to an agreement entered into in accordance with Section 4204 of ERISA), of such Seller or such ERISA Affiliate.

(e) No Seller or any organization to which such Seller is a successor or parent corporation, within the meaning of Section 4069(b) of ERISA, has engaged in any transaction described in Sections 4069 or 4212(c) of ERISA.

(f) Except in connection with the Bankruptcy Case, Sellers have no plan, contract or commitment, whether legally binding or not, to create any new employee benefit or compensation plans, policies or arrangements for any Buyer Employee.

(g) Section 5.11(g) of the Disclosure Schedules sets forth each material Benefit Plan. For each Benefit Plan or Multiemployer Plan under which any Seller Employee or Specified Employee (or their respective beneficiaries) receives any benefit or under which Parent or any Seller has any obligation to contribute to or provide any benefit to any Seller Employee or Specified Employee (or their respective beneficiaries), Sellers have made available to Buyer a copy of such plan (or a description thereof if such plan is not written). Each Benefit Plan has been maintained in all material respects with the applicable provisions of the Code, ERISA, and any other applicable Legal Requirement. Each Benefit Plan that is intended to comply with Section 401(a) of the Code has received a current, favorable determination letter issued by the IRS.

5.12 Sellers' Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (i) the conduct of the Business by Sellers as currently conducted (including the products and services currently sold or provided by Seller) does not infringe or otherwise violate any Person's Intellectual Property rights, and no such claims are pending or threatened in writing against any Seller, and (ii) no Person is infringing or otherwise violating any Acquired Intellectual Property owned by a Seller, and no such claims are pending or threatened in writing against any Person by such Sellers.

5.13 Contracts. Section 5.13 of the Disclosure Schedules sets forth a true and complete list, in all material respects, as of the date hereof, of all Material Contracts to which a Seller is a party. Each Material Contract is in full force and effect and is a valid and binding obligation of such Seller in accordance with its terms and conditions, in each case except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity, or (y) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Upon entry of the Sale Order, other than the payment of Cure Costs, (i) no Seller will be in breach or default of its obligations under any Material Contract; and (ii) to Sellers' Knowledge, no other party to any Material Contract is in breach or default thereunder, except, in each case, for any breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.14 Brokers or Finders.

Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable.

5.15 Undue Influence.

In connection with the operation of the Business, Sellers have not, and, to Sellers' Knowledge, no director, officer, agent, employee or Affiliate of any Seller has, taken any action, directly or indirectly, with respect to the Business that would result in a violation of the Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder (the "FCPA"). Sellers, and, to Sellers' Knowledge, their Affiliates, have conducted the Business in compliance with the

FCPA in all material respects and maintain procedures which are reasonably expected to ensure compliance therewith.

5.16 Absence of Certain Changes.

(a) Since the Petition Date through the date hereof, there has not been a Material Adverse Effect.

(b) Except as expressly contemplated by this Agreement, the DIP Agreements, the DIP Order or any other orders entered in the Bankruptcy Case from and after the Execution Date through the date hereof, Sellers have not:

(i) (A) purchased or otherwise acquired any material properties or assets or sold, leased, transferred or otherwise disposed of any properties or assets that would have constituted Acquired Assets as of Closing, except for purchases and sales in the Ordinary Course of Business, (B) permitted, allowed or suffered any of the material Acquired Assets to be subjected to any Encumbrance (other than Permitted Encumbrances or Encumbrances that will not prevent the transfer at Closing of such Acquired Assets free and clear of all Encumbrances (other than Permitted Encumbrances or Assumed Liabilities)), or (C) removed any (non-surplus) Equipment or other material assets that would constitute Acquired Assets (other than Inventory) from the Real Property other than in the Ordinary Course of Business;

(ii) allowed any material Permit that would have constituted a Transferred Permit held by any Seller to terminate, expire or lapse without renewal; or

(iii) agreed or committed in writing to do any of the foregoing.

5.17 [Joint Venture.

(a) Section 5.17(a) of the Disclosure Schedules sets forth a true and complete list of the formation and operating documents of the Joint Venture, including side letters and all amendments thereto (collectively, the “JV Formation Documents”). True and complete copies of the Joint Venture Documents have been made available to Buyer. Each of the Joint Venture Documents is in full force and effect except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors’ rights generally or general principles of equity, or (y) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Upon entry of the Sale Order, and the payment of Cure Costs, (i) NBL will not be in breach or default of its obligations under any of the JV Formation Documents; and (ii) to NBL’s Knowledge, no other party to any of the JV Formation Documents is in breach or default thereunder, except, in each case, for any breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Joint Venture is a partnership duly organized, validly existing and in good standing under the laws of Jamaica. The Joint Venture has all requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted. The Joint Venture is qualified or licensed to do business and is in good standing in

each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to materially and adversely affect the ability of the Joint Venture to conduct its business.

(c) NBL owns (beneficially and of record) forty-nine percent (49%) of the partnership interests of the Joint Venture, and will transfer such interest free and clear of all Encumbrances (other than Permitted Encumbrances or Encumbrances contained in the JV Formation Documents). All of such partnership interests are duly authorized, validly issued and outstanding, fully paid and nonassessable.]³⁶

5.18 Warranties Exclusive.

EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 5 (AS MODIFIED BY THE DISCLOSURE SCHEDULES) OR IN THE BILL OF SALE AND THE ASSUMPTION AGREEMENT, SELLERS MAKE NO REPRESENTATION OR WARRANTY, STATUTORY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED LIABILITIES) OR THE BUSINESS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY. NEITHER SELLERS NOR ANY OTHER PERSON, DIRECTLY OR INDIRECTLY, HAS MADE OR IS MAKING, ANY REPRESENTATION OR WARRANTY, WHETHER WRITTEN OR ORAL, REGARDING ANY PRO-FORMA FINANCIAL INFORMATION, FINANCIAL PROJECTIONS OR OTHER FORWARD-LOOKING STATEMENTS OF SELLERS.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers as follows:

6.1 Organization and Good Standing.

Buyer is a [•], duly organized, validly existing and in good standing under the laws of the State of [•]. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

6.2 Authority; Validity; Consents.

(a) Buyer has the requisite corporate or limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby, and the execution, delivery and performance of this

³⁶ Insert if Lot 3 is purchased.

Agreement and the other Transaction Documents by Buyer and the consummation by Buyer of the transactions contemplated herein and therein have been duly and validly authorized by all requisite limited liability company or corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document required to be executed and delivered by Buyer at Closing will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is (or will be) a party constitute (or, when entered into, will constitute) the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity.

(b) Except (i) as required to comply with the HSR Act and the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets or the Business and (ii) for the notices, filings and consents set forth on Section 6.2(b) of the Disclosure Schedules, Buyer is not required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from any Governmental Authority in connection with the execution and delivery of this Agreement and the other Transaction Documents to which Buyer is (or will be) a party or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, registrations, declarations or filings, the failure of which to make or obtain, would not, individually or in the aggregate, materially affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

6.3 No Conflict.

Neither the execution and delivery by Buyer of this Agreement or any other Transaction Documents to which it is (or will be) a party nor the consummation of the transactions contemplated hereby or thereby nor compliance by it with any of the provisions hereof or thereof (a) conflict with or result in a violation of (i) any provision of the certificate of incorporation or bylaws (or other organizational or governing documents) of Buyer or (ii) any material Order binding upon Buyer or (b) violate, conflict with, or result in a material breach of any of the terms of, or constitute a material default under, or give rise to any right of termination, modification, cancellation or acceleration under (i) any note, bond, mortgage, indenture, deed of trust, contract, commitment, arrangement, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which Buyer may be bound or to which any of Buyer's assets may be subject or affected in any material respect and that, in each case, is material to the business of Buyer, or (ii) any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Authority.

6.4 Brokers or Finders.

Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which any Seller (or any Affiliate of any Seller) is or will become liable.

6.5 Legal Proceedings.

There is no Proceeding or Order pending against, or to Buyer's Knowledge, threatened against or affecting, Buyer before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement and the other Transaction Documents or which would or would reasonably be expected to impair Buyer's ability to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

6.6 Financing.

Buyer has and shall, at the Closing, have sufficient available funds to permit Buyer to pay the Cash Consideration and all other amounts to be paid or repaid by Buyer under the Transaction Documents to the extent payable on or about the Closing Date, including amounts to be paid for the Cure Costs.

6.7 Qualification.

(a) To Buyer's Knowledge, there exist no facts or circumstances that would cause, or be reasonably expected to cause, Buyer and/or its Affiliates not to qualify as "good faith" purchasers under Section 363(m) of the Bankruptcy Code.

(b) As of the Closing, Buyer will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts.

6.8 No Other Representations or Warranties; Condition of the Business; Buyer's Reliance.

Buyer acknowledges that no Seller, any of its Affiliates or any other Person is making, and Buyer is not relying on, any representations or warranties whatsoever, statutory, expressed or implied, written or oral, at law or in equity, beyond those expressly made by Sellers in Article 5 hereof (as modified by the Disclosure Schedules). Buyer acknowledges that, except as expressly set forth in Article 5 (as modified by the Disclosure Schedules), no Seller, any of its Affiliates or any other Person has, directly or indirectly, made any representation or warranty, statutory, expressed or implied, written or oral, at law or in equity, as to the accuracy or completeness of any information that Sellers furnished or made available to Buyer and its Representatives in respect of the Business, and Sellers' operations, assets, stock, Liabilities, condition (financial or otherwise) or prospects. Buyer acknowledges that no Seller, any of its Affiliates or any other Person, directly or indirectly, have made, and Buyer has not relied on, any representation or warranty, whether written or oral, regarding any pro-forma financial information, financial projections or other forward-looking statements of Sellers, and Buyer will make no claim with respect thereto. Buyer acknowledges that, except as expressly set forth in Article 5 (as modified by the Disclosure Schedules), the Acquired Assets are being transferred on an "AS IS, WHERE IS" basis.

6.9 Information.

Buyer has conducted such investigations of Sellers, as it deems necessary and appropriate in connection with the execution and delivery of this Agreement and the other Transaction Documents to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby. None of Sellers or any other Person (including any officer, director, member or partner of any Seller or any of their Affiliates) shall have or be subject to any liability to Buyer, or any other Person, resulting from Buyer's use of any information, documents or material made available to Buyer in any "data rooms," management presentations, due diligence or in any other form in expectation of the transactions contemplated hereby or by the other Transaction Documents.

ARTICLE 7

ACTIONS PRIOR TO THE CLOSING DATE

7.1 Access and Reports; Confidentiality.

(a) From and after the Execution Date through and including the Closing Date or the earlier termination of this Agreement in accordance with the provisions of Article 11, Sellers shall (i) afford Buyer and its Representatives reasonable access, upon reasonable notice, to its personnel, properties, books, Permits, Contracts and records, and furnish as promptly as practicable to Buyer all reasonable information concerning the Acquired Assets, the Business, any Benefit Plans and personnel as may be reasonably requested; (ii) furnish to Buyer such financial and operating data and other information relating to the Business and the Acquired Assets as may be reasonably requested; (iii) permit Buyer to make such reasonable inspections and, at Buyer's sole cost and expense, copies thereof as Buyer may require; and (iv) instruct the executive officers and senior business managers, counsel, auditors and financing advisors of each Seller to reasonably cooperate with Buyer and its Representatives regarding the same; provided, that any such access shall be conducted consistent with and not in violation of the Bidding Procedures Order and in a manner not to unreasonably interfere with the Business. All requests for information made pursuant to this Section 7.1 shall be directed to Kerry Greer, PJT Partners LP, 280 Park Avenue, 16th Floor, New York, NY 10017 or other person as designated by such person or Sellers. Notwithstanding the foregoing, Buyer and its Representatives shall not (A) have access to personnel records of Sellers relating to individual performance or evaluation records, medical histories or other information which in Sellers' good faith opinion is sensitive or the disclosure of which could subject a Seller to risk of liability and (B) have any right to perform or conduct, or cause to be performed or conducted, any environmental sampling or testing at, in, on or underneath any of Sellers' properties without prior written consent from Sellers. No investigation pursuant to this Section 7.1 or by Buyer or its Representatives at any time prior to or following the date hereof shall affect or be deemed to modify any representation or warranty made by Sellers herein.

(b) Notwithstanding the foregoing but subject in all respects to the Bidding Procedures Order, this Section 7.1 shall not require Sellers to permit any access to, or to disclose (i) any information that, in the reasonable, good faith judgment (after consultation with counsel, which may be in-house counsel) of Sellers, is reasonably likely to result in any violation of any Legal Requirement or any Contract to which any Seller is a party or cause any privilege (including attorney-client privilege) or work product protection that any Seller would be entitled

to assert to be waived or (ii) if Sellers or any of their Affiliates, on the one hand, and Buyer or any of its Affiliates, on the other hand, are adverse parties in a litigation, any information that is reasonably pertinent thereto; provided, that, in the case of clause (i), the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so (A) would not (in the good faith belief of Sellers (after consultation with counsel, which may be in-house counsel)) be reasonably likely to result in the violation of any such Legal Requirement or Contract or be reasonably likely to cause such privilege or work product protection to be undermined with respect to such information or (B) could reasonably (in the good faith belief of Sellers (after consultation with counsel, which may be in-house counsel)) be managed through the use of customary “clean-room” arrangements pursuant to which non-employee Representatives of Buyer could be provided access to such information.

(c) All confidential documents and information concerning the Business furnished to Buyer or its Affiliates in connection with the transactions contemplated by this Agreement and the other Transaction Documents are subject to the terms and conditions of that certain Confidentiality Agreement, dated as of [•], 2016, by and between Sellers and [Buyer], the terms of which are incorporated herein by reference (the “Confidentiality Agreement”).³⁷

7.2 Operations Prior to the Closing Date.

Sellers covenant and agree that, (a) except (i) as expressly contemplated by this Agreement, (ii) as disclosed in Section 7.2 of the Disclosure Schedules, (iii) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), or (iv) as otherwise required by Legal Requirements and (b) to the extent not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any orders entered by the Bankruptcy Court in the Bankruptcy Case, or as permitted under the DIP Agreements or DIP Order (including the “Budget” (as defined in the DIP Order), subject to the “Permitted Variances” (as defined in the DIP Agreements)), after the Execution Date and prior to the Closing Date, Sellers shall carry on the Business in the Ordinary Course of Business and use commercially reasonable efforts to maintain, preserve and protect the Acquired Assets in the condition in which they exist on the date hereof, except for ordinary wear and tear and except for replacements, modifications or maintenance in the Ordinary Course of Business.

7.3 Regulatory Matters; Cooperation.

(a) Subject to Section 7.3(c), as soon as reasonably practicable following the Execution Date (or such later date as agreed in writing by all of the Parties), Sellers, on the one hand, and Buyer, on the other hand, shall each prepare and file, or cause to be prepared and filed, any notifications required to be filed under the HSR Act with the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice, and request early termination of the waiting period under the HSR Act. Buyer, on the one hand, and Sellers, on the other hand, shall promptly respond to any requests for additional

³⁷ To be updated to reflect to the Confidentiality Agreement entered into between Sellers, on the one hand, and Buyer or an Affiliate of Buyer, on the other hand, in connection with the transaction contemplated by this Agreement.

information or documentary materials in connection with such filings and shall take all other actions necessary to cause the waiting periods under the HSR Act to terminate or expire at the earliest practicable date after the date of filing. Buyer shall be responsible for payment of the applicable filing fee under the HSR Act, and each Party shall be responsible for any other payment of its own respective costs and expenses incurred by such Party (including attorneys' fees and other legal fees and expenses) associated with the preparation of its portion of any antitrust filings.

(b) Sellers, on the one hand, and Buyer, on the other hand, shall use commercially reasonable efforts to obtain (and Buyer shall cause its Affiliates to use commercially reasonable efforts to obtain), at the earliest practicable date, all necessary Governmental Authorizations and all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any), in each case relating to the Business, and take all reasonable steps as may be necessary to avoid any Proceeding by any Governmental Authority. In addition to such actions, Sellers, on the one hand, and Buyer, on the other hand, shall use commercially reasonable efforts to take (and Buyer shall cause its Affiliates to use commercially reasonable efforts to take), or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including using commercially reasonable efforts to accomplish the following: (i) taking all reasonable acts necessary to cause the conditions precedent set forth in Article 9 and Article 10 to be satisfied; (ii) defending of any Proceedings challenging this Agreement or the consummation of the transaction contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed; (iii) taking all reasonable acts necessary in connection with meeting with any Governmental Authority regarding the transferring of the Permits held by any Seller; and (iv) executing and delivering any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

(c) Sellers, on the one hand, and Buyer, on the other hand, shall, (i) promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) permit the other to review in advance any proposed written or material oral communication or information to be delivered or submitted to any such Governmental Authority in response thereto. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to restrictions under any Legal Requirements, Buyer, on the one hand, and Sellers, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives, on the one hand, and the Governmental Authority or members of its staff, on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-

client privilege or work product doctrine or which refer to valuation of the Business) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval.

(d) Subject to the terms and conditions of this Agreement, Buyer shall, and shall cause its Affiliates to, take any and all steps reasonably necessary to avoid or eliminate impediments under any Antitrust Law that may be asserted by any Governmental Authority with respect to the transactions contemplated hereby so as to enable the Closing to occur as soon as reasonably possible, including, proposing, negotiating, committing to and effecting, by consent decree or otherwise, the sale, divestiture or disposition of such assets or businesses of Buyer or any of its Affiliates as may be required in order to avoid the entry, or to effect the dissolution, of any injunction, temporary restraining order or other order in any suit or proceeding, which would otherwise have the effect of preventing, delaying or restricting the consummation of the transactions contemplated by this Agreement.

7.4 Notice of Developments.

Each Party shall promptly notify the other Party of, and furnish such other Party any information it may reasonably request with respect to, any event that would reasonably be expected to cause any of the conditions set forth in Article 9, with respect to Seller, or Article 10, with respect to Buyer, not to be fulfilled by the Outside Date.

7.5 Other Actions.

Buyer covenants and agrees that, except (w) as expressly contemplated by this Agreement, (x) with the prior written consent of Sellers (which consent shall not be unreasonably withheld, conditioned or delayed), (y) as otherwise required by Legal Requirements or (z) to the extent not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or any orders entered by the Bankruptcy Court in the Bankruptcy Case, after the Execution Date and prior to the Closing Date, Buyer shall use commercially reasonable efforts not to take or agree to or commit to assist any other Person in taking any action (i) that would reasonably be expected to result in a failure of any of the conditions to the Closing or (ii) that would reasonably be expected to impair the ability of Buyer or Sellers to consummate the Closing in accordance with the terms hereof or to materially delay such consummation.

ARTICLE 8

ADDITIONAL AGREEMENTS

8.1 Taxes.

(a) For purposes of Section 2.3(k), in the case of any Taxes with respect to the Acquired Assets that are payable with respect to any Tax period that begins before and ends after the Closing Date (a “Straddle Period”), the portion of any such Taxes that are imposed on a periodic basis with respect to the Acquired Assets that constitutes Post-Closing

Taxes shall (i) in the case of Taxes that are either (x) based upon or related to income or receipts, or (y) imposed in connection with any sale, transfer or assignment or any deemed sale, transfer or assignment of property (real or personal, tangible or intangible), be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date; and (ii) in the case of Taxes (other than those described in clause (i) above) be deemed to be the amount of such Taxes for the entire Straddle Period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding Tax period) multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period beginning on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period.

(b) Sellers and Buyer agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets (including access to books and records and Tax Returns and related working papers dated before Closing) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing authority, the prosecution or defense of any claims, suit or proceeding relating to any Tax. Notwithstanding the foregoing but subject in all respects to the Bidding Procedures Order, this Section 8.1 shall not require Sellers to permit any access to, or to disclose (i) any information that, in the reasonable, good faith judgment (after consultation with counsel, which may be in-house counsel) of Sellers, is reasonably likely to result in any violation of any Legal Requirement or any Contract to which any Seller (or any of its Affiliates) is a party or cause any privilege (including attorney-client privilege) or work product protection that any Seller (or any of its Affiliates) would be entitled to assert to be waived or (ii) if Sellers (or any of their Affiliates), on the one hand, and Buyer or any of its Subsidiaries, on the other hand, are adverse parties in a litigation, any information that is reasonably pertinent thereto; provided, that, in the case of clause (i), the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so (A) would not (in the good faith belief of Sellers (after consultation with counsel, which may be in-house counsel)) be reasonably likely to result in the violation of any such Legal Requirement or Contract or be reasonably likely to cause such privilege or work product protection to be undermined with respect to such information or (B) could reasonably (in the good faith belief of Sellers (after consultation with counsel, which may be in-house counsel)) be managed through the use of customary “clean-room” arrangements pursuant to which non-employee Representatives of Buyer could be provided access to such information.

8.2 Bulk Sales.

The Sale Order shall provide either that (a) Sellers have complied with the requirements of any Legal Requirement relating to bulk sales and transfer or (b) compliance with the Legal Requirements relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

8.3 Payments Received.

Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as

and when received by them, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which belongs to the other and will account to the other for all such receipts.

8.4 Assumed Contracts: Adequate Assurance and Performance.

Buyer shall, and shall cause its Affiliates to, use commercially reasonable efforts to provide adequate assurance of the future performance by Buyer of each Assumed Contract as required under Section 365 of the Bankruptcy Code. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer's and Sellers' Representatives available to testify before the Bankruptcy Court.

8.5 Employee Matters

(a) Employees. As soon as practicable following the entry of the Sale Order, Buyer shall determine which Seller Employees and Specified Employees (other than the Excluded Employees), if any, to offer employment to, in its sole discretion. Buyer shall set initial terms and conditions of employment, including wages, benefits, job duties and responsibilities and work assignment, provided that, from and after the Closing Date until the first (1st) anniversary thereof, Buyer shall provide, or cause to be provided, to each Buyer Employee (i) a base salary or base wages at an annual rate that is at least equal to the annual rate of the base salary or base wages that was provided to such Buyer Employee immediately prior to the Closing and (ii) employee benefits that are substantially comparable in the aggregate to the employee benefits made available to such Buyer Employee immediately prior to the Closing Date. For the avoidance of doubt, nothing in the preceding sentence shall obligate Buyer to provide pension benefits pursuant to a defined benefit pension plan (other than pursuant to the Union Pension and OPEB Plans), provided that Buyer must take into account the value of any employee benefits provided under a defined benefit pension plan provided to Seller Employees and Specified Employees prior to the Closing for purposes of determining the value of "substantially comparable" benefits per the preceding sentence. Nothing herein shall affect the Buyer's right or ability to amend, terminate, suspend, or freeze accruals under any employee benefit plan. In addition, Buyer will adopt an incentive compensation plan with respect to calendar year 2016 on terms substantially comparable in the aggregate to the Company's 2015 Incentive Compensation Plan. With respect to Excluded Employees, Buyer shall make offers of employment as Buyer and Sellers shall mutually agree. Employees who are offered and accept such offers of employment with Buyer and further then actually commence employment with Buyer will become "Buyer Employees" after the Closing. Sellers shall terminate, or shall cause to be terminated, on or prior to the Closing Date the employment of all Employees who are offered and accept offers of employment with Buyer pursuant to this Section 8.5(a). Notwithstanding the foregoing, nothing herein will, after the Closing Date, impose on Buyer any obligation to retain any Buyer Employee in its employment for any amount of time or on any terms and conditions of employment. The employment of each such Buyer Employee with Buyer

(including any Buyer Employee who may be on leave of absence) will commence immediately after the Closing Date. Except as otherwise required by Legal Requirement, specified in this Agreement, or otherwise agreed in writing by Buyer, Buyer shall not be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention payments, to any Employee on account of any termination of such Employee's employment on or before the Closing Date, and such benefits (if any) shall remain Excluded Liabilities and obligations of Sellers.

(b) Access to Information. After the Execution Date, Sellers shall provide Buyer, its Affiliates, and their Representatives with reasonable access to the Employees and with information, including employee records and Benefit Plan data, reasonably requested by Buyer and such Affiliates, except as otherwise prohibited by Legal Requirements.

(c) Benefit Plans. To the extent that service is relevant for any purpose (including eligibility, vesting and accrual) under any employee benefit plan, program, policy or arrangement of Buyer or its Subsidiaries, Buyer shall credit (or cause to be credited) the Buyer Employees for service earned prior to the Closing with any Seller in addition to service earned with Buyer on and after the Closing to the extent such service was taken into account under a similar Benefit Plan of any Seller prior to Closing, and provided that such credit does not result in any duplication of benefits. To the extent the Buyer Employees and their eligible dependents enroll in any welfare benefit plan of Buyer or its Subsidiaries, subject to the terms of any such plan, Buyer shall undertake commercially reasonable efforts to waive, or cause such waiver of, any preexisting condition limitations applicable to such Buyer Employees to the extent that Buyer Employee's or eligible dependent's condition would not have operated as a preexisting condition under the applicable corresponding welfare benefit plan as maintained by the applicable Seller. In addition, subject to the terms of the applicable welfare benefit plan of Buyer or its Subsidiaries, Buyer shall undertake commercially reasonable efforts to (i) waive all waiting periods under such welfare benefit plan otherwise applicable to the Buyer Employees and their eligible dependents, other than waiting periods that are in effect with respect to such individuals as of the Closing to the extent not satisfied under Sellers' applicable Benefit Plans, and (ii) provide each Buyer Employee and his or her dependents with corresponding credit under such welfare benefit plan for any co-payments and deductibles paid by them under Sellers' applicable corresponding Benefit Plans during the portion of the respective plan year prior to the Closing. At any time and from time to time after the Execution Date, Sellers and Buyer shall take, or cause to be taken, any and all actions necessary to effectuate the terms of this Section 8.5(c). Prior to the Closing, Sellers shall reasonably cooperate with Buyer and its Affiliates and give commercially reasonable assistance as Buyer may reasonably request in order to effectuate the foregoing.

(d) Payroll Taxes. For purposes of payroll taxes with respect to the Buyer Employees, Sellers shall treat the transactions contemplated by this Agreement, as a transaction described in Treasury Regulation Sections 31.3121(a)(1)-1(b)(2) and 31.3306(b)(1)-(b)(2) (i.e., Buyer shall be treated as a successor for payroll tax purposes); and as such, Sellers and Buyer shall report on a predecessor/successor basis as set forth under the "Standard Procedure" provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320.

(e) WARN Act. With respect to Buyer Employees, Buyer will have full responsibility under the WARN Act relating to any act or omission of Buyer after the Closing Date. With respect to the Employees, Sellers will have full responsibility under the WARN Act relating to any act or omission of Sellers prior to and on the Closing Date.

(f) CBAs. Notwithstanding anything in this Agreement to the contrary, immediately following the Closing, Buyer shall or shall cause its Affiliates to make an offer to the respective unions to adopt and assume the Collective Bargaining Agreements, each as listed on Section 5.10(a) of the Disclosure Schedules, on terms in effect as of the date of execution of this Agreement. Except as set forth on Schedule 2.3(e), neither Buyer nor any of its Affiliates shall be required or deemed to assume any Liabilities thereunder arising based upon facts, acts or omissions occurring before the Closing except for any responsibility to ensure that the Union Pension and OPEB Plans required by such Collective Bargaining Agreements are funded as required by applicable Legal Requirements, which Buyer respectively shall assume.

(g) Union Pension and OPEB. Notwithstanding anything in this Agreement to the contrary, immediately following the Closing, Buyer shall or shall cause its Affiliates to (x) adopt and assume the Union Pension and OPEB Plans and any and all Liabilities thereunder whether arising before, on or after the Closing, and (y) accept the transfer of assets from the trusts funding the Union Pension and OPEB Plans, if any.

(h) No Third-Party Beneficiaries; Employment Status. All provisions contained in this Agreement with respect to employee benefit plans or compensation of Buyer Employees are included for the sole benefit of the respective parties hereto. Nothing contained herein (i) shall confer upon any former, current or future employee of any Seller or Buyer or any legal representative or beneficiary thereof any rights or remedies, including any right to employment or continued employment, of any nature, for any specified period; (ii) shall cause the employment status of any former, present or future Employee to be other than terminable at will; or (iii) shall confer any third party beneficiary rights upon any Buyer Employee or any dependent or beneficiary thereof or any heirs or assigns thereof.

8.6 Post-Closing Books and Records; Properties; and Personnel.

From and after the Closing Date for a period of three (3) years, Buyer shall provide Sellers (and their Representatives) with access, at reasonable times and in a manner so as not to unreasonably interfere with its normal business, to the assets, books, records, systems and other property and any employees of Buyer so as to enable Sellers to prepare financial or court filings or reports, to respond to court orders, subpoenas or inquiries, investigations, audits or other proceedings of Governmental Authorities, to prosecute and defend Proceedings or for other like purposes, including Claims, objections and resolutions, and to enable Sellers to wind down the Business. During such three (3) year period, Sellers (and their Representatives) shall be permitted to make copies of any books and records described in this Section 8.6, subject to the confidentiality requirements set forth in Section 7.1. If Buyer desires to dispose of any such books and records, Buyer shall, thirty (30) days prior to such disposal, provide Sellers with a reasonable opportunity to remove or copy such records to be disposed of at Sellers' expense. For the avoidance of doubt, nothing in this Section 8.6 shall be seen as limiting the Parties' obligations under Section 8.1(b).

8.7 Use of Name.

Buyer agrees that from and after the Closing, Buyer shall not use or employ any name which includes the words “Noranda”, “Noralinc”, “Norandal”, “Stannbl”, “Gramercyal” or “Noralm”, including those names set forth on Schedule 2.2(s), or any similar names indicating affiliation with any Seller, any of their Affiliates or the business or activities engaged in by Sellers or any of Sellers’ Affiliates prior to or after the Closing (collectively, the “Retained Names and Marks”); provided, however, that (a) for a period up to twelve (12) months after the Closing, Buyer shall be entitled to use, solely in connection with the operation of the Business as operated in all material respects immediately prior to the Closing, all of its existing stocks of signs, letterheads, invoice stock, advertisements and promotional materials, inventory, packaging and other documents and materials included as part of the Acquired Assets (“Existing Stock”) containing the Retained Names and Marks, provided that Buyer shall use commercially reasonable efforts to remove, or cease using the Retained Names and Marks (or in the case of advertisements, promotional materials, inventory and packaging, over-label or re-sticker such Existing Stock so as to conceal such Retained Names and Marks) as promptly as practicable after the Closing, and (b) Buyer shall be entitled to use or employ any of the Retained Names and Marks to inform third parties (including customers and suppliers) that the Business (i) was formerly owned by a Seller and (ii) is now owned by Buyer.

8.8 No Successor Liability.

The Parties intend that, except as included in the Assumed Liabilities, upon the Closing, Buyer shall not be deemed to: (a) be the successor of or successor employer (as described under COBRA and applicable regulations thereunder) to any Seller, including with respect to any Benefit Plan, (b) have, *de facto*, or otherwise, merged with or into any Seller; (c) be a mere continuation or substantial continuation of any Seller or the enterprise(s) of such Seller; or (d) be liable for any acts or omissions of any Seller in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in this Agreement. The Parties agree that the provisions substantially in the form of this Section 8.8 shall be reflected in the Sale Order.

ARTICLE 9

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to fulfillment, at or prior to the Closing, of each of the following conditions, any one or more of which may (to the extent legally permissible) be waived by Buyer in writing, in its sole and absolute discretion:

9.1 Accuracy of Representations.

The representations and warranties of Sellers set forth in Article 5 shall be true and correct in all respects (without giving effect to any qualification as to materiality or Material Adverse Effect) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that

representations and warranties which are confined to a specified date shall speak only as of such date); provided, however, that in the event of a breach of a representation or warranty, the condition set forth in this Section 9.1 shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together results in a Material Adverse Effect. Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer of each Seller.

9.2 Sellers' Performance.

The covenants and agreements that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer of each Seller.

9.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, decreed or entered any Order or Legal Requirement from and after the Execution Date, which is in effect and has the effect of prohibiting (or delaying beyond the Outside Date) the consummation of the transactions contemplated by this Agreement.

9.4 Governmental Authorizations.

To the extent that the HSR Act is applicable, any waiting period (and any extension thereof) under the HSR Act shall have expired or shall have been terminated and, if applicable, the other approvals and consents listed on Schedule 9.4 shall have been obtained; and

9.5 Sellers' Deliveries.

Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

9.6 Sale Order.

Subject to Section 2.5, the Bankruptcy Court shall have entered the Sale Order, and the Sale Order shall be in full force and effect and shall not have been reversed, stayed, vacated, terminated, modified or amended.

9.7 Assumed Contracts.

The Bankruptcy Court shall have approved and authorized, other than with respect to Cure Costs, the assumption and assignment of each Assumed Contract, except as would not materially and adversely affect the operation of the Business from and after the Closing.

9.8 Material Adverse Effect.

Since the Execution Date, no Material Adverse Effect shall have occurred.

ARTICLE 10

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to fulfillment, at or prior to the Closing, of each of the following conditions, any one or more of which may (to the extent legally permissible) be waived by Sellers in writing, in their sole and absolute discretion:

10.1 Accuracy of Representations.

The representations and warranties of Buyer set forth in Article 6 shall be true and correct in all respects (without giving effect to any qualification as to materiality or Material Adverse Effect) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that representations and warranties which are confined to a specified date shall speak only as of such date); provided, however, that in the event of a breach of a representation or warranty, the condition set forth in this Section 10.1 shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together results in a material adverse effect on the ability of Buyer to consummate the transactions contemplated by this Agreement. Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer of Buyer.

10.2 Buyer's Performance.

The covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized representative of Buyer.

10.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, decreed, or entered any Order or Legal Requirement from and after the Execution Date, which is in effect and has the effect of prohibiting (or delaying beyond the Outside Date) the consummation of the transactions contemplated by this Agreement.

10.4 Governmental Authorizations.

To the extent that the HSR Act is applicable, any waiting period (and any extension thereof) under the HSR Act shall have expired or shall have been terminated and, if applicable, the other approvals and consents listed on Schedule 10.4 shall have been obtained; and

10.5 Buyer's Deliveries.

Each of the deliveries required to be made to Sellers pursuant to Section 4.2 shall have been so delivered.

10.6 Sale Order. Subject to Section 2.5, the Bankruptcy Court shall have entered the Sale Order, and the Sale Order shall be in full force and effect and shall not have been reversed, stayed, vacated, terminated, modified or amended.

ARTICLE 11

TERMINATION

11.1 Termination Events.

Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated at any time prior to the Closing only as follows.

- (a) by mutual written consent of Sellers and Buyer;
- (b) by written notice from either Sellers or Buyer:
 - (i) if a Governmental Authority issues a final, non-appealable ruling or Order permanently restraining, enjoining or otherwise prohibiting consummation of the transactions contemplated hereby where such ruling or Order was not requested, encouraged or supported by any of the Parties;
 - (ii) if the Closing shall not have occurred on or prior to [•], 2016 (the “Outside Date”); provided, however, that (A) if the Closing has not occurred by such date, but on such date all of the conditions set forth in Article 9 and Article 10 have been satisfied or waived (to the extent such conditions may be waived) other than the conditions set forth in Sections 9.4 and 10.4, then the Outside Date shall automatically be extended until thirty (30) days after such initial Outside Date and (B) if Buyer is the “Backup Bidder” in the Auction (each as defined in the Bidding Procedures), Buyer’s right to terminate this Agreement pursuant to this Section 11.1(b)(ii) shall be subject to the Bidding Procedures (and such extended date pursuant to clause (A) or (B) shall be deemed to be the “Outside Date” for all purposes hereunder); provided, further that the terminating Party under this Section 11.1(b)(ii) is not (at such time of termination) in breach of any representation, warranty, covenant or other agreement in this Agreement so as to cause any conditions to Closing not to be satisfied and shall not have been the proximate cause of the failure of the Closing to occur on or prior to the Outside Date; or
 - (iii) upon the final, non-appealable ruling or denial of the Governmental Authorizations described in Sections 9.4 and 10.4 and required to be obtained by Closing.
- (c) by written notice from Buyer in the event of any breach of, or failure to perform, by Sellers of any of their agreements, covenants, representations or warranties contained herein or in the Sale Order, which breach or failure to perform (A) would result in a condition set forth in Article 9 not to be satisfied and (B) cannot be cured (and was not cured) within twenty (20) Business Days after Buyer notifies Sellers of such breach in writing; provided that Buyer shall not have a right of termination pursuant to this Section 11.1(c) if it is then in

material breach of any of its agreements, covenants, representations or warranties contained herein or in the Sale Order.

(d) by written notice from Sellers in the event of any breach of, or failure to perform, by Buyer of any of its agreements, covenants, representations or warranties contained herein or in the Sale Order, which breach or failure to perform (A) would result in a condition set forth in Article 10 not to be satisfied and (B) cannot be cured (and was not cured) within twenty (20) Business Days after Sellers notify Buyer of such breach in writing; provided that Sellers shall not have a right of termination pursuant to this Section 11.1(d) if Sellers are then in material breach of any of their agreements, covenants, representations or warranties contained herein or in the Sale Order; provided further, that any purported termination of this Agreement by Buyer pursuant to Section 11.1(b)(ii) shall be deemed to be a termination by Seller pursuant to this Section 11.1(d) if Seller is entitled to terminate this Agreement pursuant to this Section 11.1(d) at the time of such purported termination.

Each condition set forth in this Section 11.1 shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in this Section 11.1 are applicable, the applicable Party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated.

11.2 Effect of Termination.

In the event of termination of this Agreement by Buyer or Sellers pursuant to this Article 11, this Agreement shall become null and void and have no effect, and all rights and obligations of the Parties under this Agreement shall terminate without any Liability of any Party to any other Party; provided, that the provisions of Sections 7.1(c) (Access and Reports; Confidentiality), 12.9 (Expenses), 12.10 (Governing Law, Consent to Jurisdiction and Venue; Jury Trial Waiver), 12.15 (No Liability) and this Section 11.2 (and, to the extent applicable to the interpretation or enforcement of such provisions, Article 1), shall expressly survive the termination of this Agreement; provided, further, that, in the event that Sellers terminate (or are deemed to terminate) this Agreement pursuant to Section 11.1(d), Sellers shall keep the Good Faith Deposit provided by Buyer pursuant to the Bidding Procedures.

ARTICLE 12

GENERAL PROVISIONS

12.1 Survival.

All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms until fully performed or satisfied. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificates delivered hereunder shall not survive the Closing and shall thereupon terminate, including any Proceedings for damages in respect of any breach thereof.

12.2 Confidentiality.

Following the Closing, each Seller agrees not to disclose any confidential or non-public information concerning the Acquired Assets, the Business, the negotiation or existence and terms of this Agreement or the business affairs of Buyer or the Assumed Liabilities (“Confidential Information”) except disclosure of Confidential Information that (a) was or is lawfully obtained from a source that, to the Knowledge of such Seller, was not under an obligation of confidentiality to Buyer with respect to such information, (b) is independently developed by such Seller without violating any of its obligations under this Agreement, (c) is or becomes available to the public, (d) is or may be necessary to wind down any of Sellers’ estates, or in connection with the enforcement of the rights of, or the defense of any Proceeding against or involving, any Seller, provided that the Confidential Information is afforded confidential treatment, (e) primarily relates to any Excluded Assets and/or Excluded Liabilities, or (f) is or may be necessary in connection with the Bankruptcy Case provided that the Confidential Information is afforded confidential treatment. Notwithstanding the foregoing, a Seller may disclose Confidential Information if such Seller believes (upon the advice of counsel) it is legally required to make such disclosure in order to comply with applicable law, regulation, rule or legal, judicial or administrative process (including any rule, regulation or policy statement of (i) any organized securities exchange, market or automated quotation system on which the Company’s securities are listed or quoted, (ii) any self-regulatory organization of which a Party is a member or (iii) in connection with the Bankruptcy Case). If a Seller or any of its Representatives becomes required (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) or it becomes necessary in connection with the Bankruptcy Case to disclose any of the Confidential Information, such Seller or Representative shall use reasonable efforts to provide Buyer with prompt notice, to the extent allowed by law, rule and regulation, of such requirement. Each Seller agrees to disclose only that portion of the Confidential Information which it believes it is necessary or required to disclose and to use commercially reasonable efforts to obtain confidential treatment of such Confidential Information.

12.3 Public Announcements.

From the Execution Date to the Closing, unless otherwise required by applicable Legal Requirement or by obligations of Buyer or Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement or the transactions contemplated hereby and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed). From and after the Closing, except to the extent necessary or required (a) by the Bankruptcy Court or (b) in connection with the Bankruptcy Case or the Sale Motion, the Parties may make public statements with respect to this Agreement or the transactions contemplated hereby so long as such announcements do not disclose the specific terms or conditions of this Agreement except where such terms and conditions have already been disclosed as required by Legal Requirement or by obligations of Buyer or Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange; provided, that the issuing party

shall use its commercially reasonable efforts to consult with the other party with respect to the text thereof to the extent practicable.

12.4 Notices.

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by overnight courier or facsimile transmission:

(a) If to Sellers, then to:

Noranda Aluminum Holding Corporation
801 Crescent Centre Drive
Suite 600
Franklin, TN 37067
Attn: Gail Lehman
Facsimile: (615) 771-8892

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Attn: Steven J. Williams
Elizabeth R. McColm
Facsimile: (212) 757-3990

(b) If to Buyer:

[•]

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

[•]

and

[•]

or to such other Person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date on which so personally-delivered or faxed or delivered by overnight courier.

12.5 Waiver.

Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a

waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Legal Requirements, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

12.6 Entire Agreement; Amendment.

This Agreement (including the Disclosure Schedules and the Exhibits), the Sale Order, the Bidding Procedures Order, the Confidentiality Agreement and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Agreement may not be amended, modified or supplements except by a written agreement executed by each of the Parties.

12.7 Assignment.

This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of all of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party) and any assignment in contravention of this Section 12.7 shall be null and void *ab initio*.

12.8 Severability.

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible; and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

12.9 Expenses.

Except as otherwise expressly provided in this Agreement, including Section 11.2, whether or not the transactions contemplated by this Agreement are consummated, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the transactions contemplated hereby.

12.10 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; provided, however, that, if the Bankruptcy Case has been closed pursuant to Section 350(a) of the Bankruptcy Code, all Proceedings arising out of or relating to this Agreement shall be heard and determined in a New York state court or a federal court sitting in the state of New York, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. The Parties consent to service of process by mail (in accordance with Section 12.4) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLERS, BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

12.11 Counterparts.

This Agreement and any amendment hereto may be executed in counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.4, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by telecopier, facsimile or email attachment that contains a portable document format (.pdf) file of an executed signature shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

12.12 Parties in Interest; Third Party Beneficiaries; No Amendment.

This Agreement and the other Transaction Documents shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement and the other Transaction Documents are for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

Notwithstanding anything to the contrary, nothing in this Agreement shall constitute an amendment to any Benefit Plan.

12.13 Remedies.

Neither the exercise of nor the failure to exercise a right of set-off or to give notice of a claim under this Agreement will constitute an election of remedies or limit Sellers or Buyer in any manner in the enforcement of any other remedies that may be available to any of them, whether at law or in equity.

12.14 Specific Performance.

Each Party recognizes that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof or were otherwise breached, and that monetary damages alone would not be adequate to compensate the non-breaching Party or Parties for their injuries. Accordingly, a non-breaching Party shall be entitled to injunctive relief to enforce the terms and provisions of this Agreement. If any Proceeding is brought by the non-breaching Party or Parties to enforce any of the terms or provisions of this Agreement pursuant to this Section 12.14, the Party in breach shall waive the defense that there is an adequate remedy at law. Each Party agrees to waive any requirement for the security or posting of any bond in connection with any Proceeding seeking specific performance of such terms or provisions and that the only permitted objection that it may raise in response to any action for specific performance of such terms or provisions is that it contests the existence of a breach or threatened breach of such provisions. The rights set forth in this Section 12.14 shall be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

12.15 No Liability.

No past, present or future director, officer, employee, incorporator, member, partner or equityholder or other Affiliates of the Parties shall have any liability for any obligations or liabilities of Sellers or Buyer, as applicable, under this Agreement or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as parties hereto or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties, no other party shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of any party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any Proceeding based on, in respect of, or by reason of, the transactions contemplated hereby or thereby (including the breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, fraud, strict liability, other Legal Requirements or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a Party or another Person or otherwise.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be executed and delivered by their duly authorized representatives, all as of the Execution Date.

[BUYER]

By: _____
Name:
Title:

[SELLERS]

By: _____
Name:
Title: