

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:

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

Debtors.

Case No. 16-10083-399

Chapter 11

Jointly Administered

Hearing Date & Time:

September 27, 2016 at 12:30 p.m.
(prevailing Central Time)

Objection Deadline:

September 26, 2016 at 4:00 p.m.
(prevailing Central Time)

Hearing Location:

St. Louis Courtroom 5 North

**NOTICE OF DEBTORS' MOTION FOR AN
ORDER (A) APPROVING ENTRY INTO STALKING
HORSE AGREEMENT AND AUTHORIZING BID
PROTECTIONS IN CONNECTION WITH THE SALE
OF THE NEW MADRID ASSETS ASSOCIATED WITH THE
DEBTORS' UPSTREAM BUSINESS AND (B) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on **September 27, 2016 at 12:30 p.m. (prevailing Central Time)**, before the Honorable Barry S. Schermer in Bankruptcy Courtroom 5 North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

WARNING: Any response or objection to this motion must be filed with this Court prior to September 26, 2016 at 4:00 p.m. (prevailing Central Time). A copy shall be promptly served upon the undersigned.

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Dated: September 20, 2016
St. Louis, Missouri

Respectfully submitted,
CARMODY MACDONALD P.C.

/s/ Christopher J. Lawhorn
Christopher J. Lawhorn, # 45713MO
Angela L. Drumm, #57678MO
Colin M. Luoma, #65000MO
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
Facsimile: (314) 854-8660
cjl@carmodymacdonald.com
ald@carmodymacdonald.com
cml@carmodymacdonald.com

Local Counsel to the Debtors and
Debtors in Possession

- and -

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Alan W. Kornberg
Elizabeth R. McColm
Sarah Harnett
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
akornberg@paulweiss.com
emccolm@paulweiss.com
sharnett@paulweiss.com

Counsel to the Debtors and
Debtors in Possession

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 20th day of September, 2016, and service shall be made by Prime Clerk to counsel of record and parties as required in the Case Management Order dated 2/12/2016 through CM/ECF or via first-class mail.

/s/ Christopher J. Lawhorn

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ENTRY INTO STALKING HORSE AGREEMENT AND
AUTHORIZING BID PROTECTIONS IN CONNECTION
WITH THE SALE OF THE NEW MADRID ASSETS
ASSOCIATED WITH THE DEBTORS' UPSTREAM
BUSINESS AND (B) GRANTING RELATED RELIEF**

Noranda Aluminum, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a "Debtor" and, collectively, the "Debtors" or the "Company"),¹ by and through their undersigned counsel, hereby submit this motion (the "Motion") pursuant to sections 105, 363 and 503 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "Bankruptcy Code") and rules 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order (the "Stalking Horse Approval

¹ Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stalking Horse Agreement (as defined below) and, if not defined therein, in the Bidding Procedures (as defined below), as applicable.

Order)² (a) approving the entry by Noranda Aluminum, Inc. (the “Seller”) into the Asset Purchase Agreement (the “Stalking Horse Agreement”), attached hereto as Exhibit A,³ with MFR II, LLC (the “Stalking Horse Purchaser” or “Buyer”) for the sale (the “Sale”) of certain of the Debtors’ assets (the “Acquired Assets”) associated with the production of primary aluminum and the conversion of molten primary aluminum into value-added products, as conducted at New Madrid, Missouri (the “New Madrid Facility”) prior to the idling of the New Madrid Facility, in accordance with the Stalking Horse Agreement, and authorizing a break-up fee and expense reimbursement in connection therewith (the “Bid Protections”), and (b) granting related relief. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

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

2. The statutory predicates for the relief sought herein are Bankruptcy Code sections 105 and 363 and Bankruptcy Rules 6004 and 9014.

² A copy of the proposed Stalking Horse Approval Order will be made available on the Debtors’ case website at <https://cases.primeclerk.com/noranda> (the “Case Website”) in advance of the hearing on the Motion.

³ Due to their voluminous nature, copies of the schedules to the Stalking Horse Agreement and any ancillary agreements are not attached hereto. Such schedules and any ancillary agreements will be made available in the bidder data room, subject to applicable confidentiality arrangements as set forth in the Bidding Procedures.

BACKGROUND

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

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

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

6. On June 13, 2016, the Debtors filed a motion (the "Bidding Procedures Motion") [Docket No. 875] seeking approval of, among other things, (i) an order establishing auction and bidding procedures (the "Bidding Procedures") for the sale of the Debtors' primary aluminum production business (the "Upstream Business") and (ii) an order approving the sale of the Upstream Business to the bidder(s) with the highest or otherwise best bid(s) in accordance with the Bidding Procedures.

7. On July 20, 2016, in connection with the relief requested in the Bidding Procedures Motion, the Court entered the *Order Establishing Bidding Procedures for the Sale of*

the Upstream Business and Granting Related Relief (the “Bidding Procedures Order”) [Docket No. 998]. The Bidding Procedures Order approved the Bidding Procedures and fixed certain deadlines, including an initial bid deadline of September 15, 2016.

8. On September 15, 2016, the Debtors, pursuant to the Bidding Procedures Order, and having consulted with the Consultation Parties, modified the sale process dates [Docket No. 1123]. Accordingly, the Bid Deadline is now September 27, 2016 at 1:00 p.m. (prevailing Central Time), the Auction is now scheduled for September 28, 2016 at 10:00 a.m. (prevailing Eastern Time), and the Sale Hearing is scheduled for September 30, 2016 at 9:30 a.m. (prevailing Central Time).

9. The Bidding Procedures Order contemplates that the Debtors may at any time before August 8, 2016 (or such later date as the Debtors determine in their reasonable discretion in consultation with the Consultation Parties) enter into a Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, with any Stalking Horse Bidder that submits a Qualified Bid for all or a portion of the Upstream Business acceptable to the Debtors, in consultation with the Consultation Parties, to establish a minimum Qualified Bid at the Auction. (*See* Bidding Procedures Order, ¶ 9.) It also provides that the Stalking Horse Agreement may contain certain customary terms and conditions, including bid protections, in amounts to be agreed by the Debtors in accordance with the Bidding Procedures. (*See* Bidding Procedures Order, ¶ 10.) The Bidding Procedures Order provides that the Debtors’ entry into the Stalking Horse Agreement and the provision of related bid protections may be approved by the Court on no less than seven (7) days’ notice. (*See* Bidding Procedures Order, ¶ 11.)

THE STALKING HORSE AGREEMENT

10. Following weeks of negotiation, the Debtors have executed the Stalking Horse Agreement and are hereby seeking provisional approval of the Stalking Horse Purchaser. A summary of the principal terms of the Stalking Horse Agreement is as follows:⁴

<u>Buyer:</u>	MFR II, LLC
<u>Purchase Price:</u>	Cash consideration of thirteen million Dollars (\$13,000,000) (the “ <u>Cash Consideration</u> ”), subject to a purchase price reduction for the price allocated to certain real property as set forth in the Stalking Horse Agreement. (See Stalking Horse Agreement, Section 3.1(a).)
<u>Acquired Assets:</u>	All of Seller’s right, title and interest in, to or under the properties, rights, claims and assets solely relating to the business and operations of Seller 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 Facility prior to the idling of the Facility, other than with respect to such business and operations to the extent they relate to any Excluded Assets (the “ <u>Business</u> ”). Includes real property, inventory, equipment, Assumed Contracts, permits, intellectual property, a certificate of deposit related to a permit issued by the Missouri Department of Natural Resources, data/documents/business records and goodwill of the Business. (See Stalking Horse Agreement, Sections 2.1, 2.1(A).)
<u>Excluded Assets:</u>	Employee records and Benefit Plans, corporate books and records, any contract that is not an Assumed Contract; insurance policies; prepaid deposits related to professional fee retainers; Cash Consideration and all cash and cash equivalents; directors and officers insurance policies, rights, claims or causes of action of Seller under the Stalking Horse Agreement or the other Transaction Documents; permits and licenses that are non-transferable; Avoidance Actions; Lender Claims and Intercompany Claims/receivables; claims for tax refunds for taxes paid by Seller prior to Closing; and all Intellectual Property utilizing the names “Noranda”, “Noralinc” “Norandal”, “Stannbl”, “Gramercyal” or “Noralnm” or variations or

⁴ The following summary is qualified in its entirety by reference to the provisions of the Stalking Horse Agreement. In the event of any inconsistencies between the Stalking Horse Agreement and the descriptions herein, the terms of the Stalking Horse Agreement shall govern.

	derivations thereof. (<i>See</i> Stalking Horse Agreement, Section 2.2.)
<u>Assumed Liabilities:</u>	Liabilities under the Assumed Contracts, including Cure Costs, Liabilities relating to the removal, transportation and disposal of all Spent Material, Liabilities arising out of the ownership of the Acquired Assets from and after the Closing, all Liabilities of Seller to the extent arising out of or relating to the Transferred Permits and Liabilities for any 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 7.7(a) of the Stalking Horse Agreement). (<i>See</i> Stalking Horse Agreement, Section 2.3.)
<u>Excluded Liabilities:</u>	All Liabilities of Seller, the Business or the Acquired Assets not expressly assumed by Buyer in the Stalking Horse Agreement, including any Liability owed to, or for the benefit of, or in respect of, any Seller Employee, Benefit Plan or Multiemployer Plan pursuant to any Legal Requirement, any Liability of Seller to the extent that it relates to an Excluded Asset and is not expressly assumed by Buyer, any Liability of Seller with respect to all unpaid Taxes apportioned to Pre Closing Tax Periods in accordance with the Stalking Horse Agreement and, except as expressly assumed, any Liability of Buyer arising from successor or transferee Liability (whether imposed by Legal Requirement, Contract or otherwise) in connection with the transactions contemplated by the Stalking Horse Agreement. (<i>See</i> Stalking Horse Agreement, Section 2.4.)
<u>Closing Date:</u>	No later than October 31, 2016. (<i>See</i> Stalking Horse Agreement, Section 10.1.)
<u>Termination:</u>	Termination provisions include: (i) if Closing does not occur by October 31, 2016 or the sale is prohibited by a Governmental Authority or final order, (ii) breach by Seller of any of the agreements, covenants, representations or warranties contained in the Stalking Horse Agreement that results in the closing conditions of Buyer not being satisfied and cannot be cured within ten (10) days following Buyer's notification to Seller of such breach, (iii) breach by Buyer of any of the agreements, covenants, representations or warranties contained in the Stalking Horse Agreement that results in the closing conditions of Seller not being satisfied and cannot be cured within ten (10) days following Sellers's notification to Buyer of such breach, (iv) if the Bid Protections Order has not been entered by the Bankruptcy Court within fourteen (14) days of the Execution Date, (v) if Seller consummates a transaction to purchase a substantial part of the Acquired Assets by the Successful Bidder (as defined in the

	Bidding Procedures), other than Buyer or an Affiliate of Buyer (an “ <u>Alternative Transaction</u> ”) and (vi) mutual written consent. (See Stalking Horse Agreement, Section 10.1.)
<u>Bid Protections:</u>	The parties are seeking approval of a “breakup fee” of three percent (3%) of the Cash Consideration, plus reimbursement of Buyer’s out of pocket expenses, capped at \$130,000, for actual and documented out-of-pocket fees and expenses, including fees and expenses of legal advisors, financial advisors and accountants, incurred by Buyer in connection with the Stalking Horse Agreement and the transactions contemplated thereby, in the event that Seller consummates an Alternative Transaction. (See Stalking Horse Agreement, Section 7.13, 10.2.)
<u>Closing Conditions:</u>	In addition to customary closing conditions, the obligation of the Stalking Horse Purchaser to consummate the transactions contemplated by the Stalking Horse Agreement is subject to the Court’s approval of the Sale Order and the issuer of the Title Policy shall have indicated in writing to Buyer that it is prepared to issue the Title Policy subject only to receipt of payment for the associated premium. (See Stalking Horse Agreement, Article 8.)
<u>CBA and Union Pension Plans:</u>	Buyer is not assuming the CBAs or Union Pension Plans.

11. As described above, the Debtors also seek approval of the following Bid Protections: (a) a break-up fee of 3% of the Cash Consideration (equal to \$390,000) (the “Break-Up Fee”) and (b) expense reimbursement not greater than \$130,000 (the “Expense Reimbursement”), in each case payable upon the consummation of an Alternative Transaction.

12. The Buyer has expressed its unwillingness to act as the Stalking Horse Purchaser for the Acquired Assets and to commit further resources unless the Debtors are authorized to provide the Bid Protections requested by this Motion. The Stalking Horse Agreement and the relief requested by this Motion are consistent with the sale procedures implemented in connection with the Bidding Procedures Order. In light of the foregoing, to participate in the

Auction, Qualified Bids, other than the Stalking Horse Purchaser, submitted on or prior to the Bid Deadline must equal or exceed at least the Cash Consideration plus the Bid Protections and the Minimum Overbid Increment, and be an otherwise higher or better bid.

13. The Debtors, after consultation with their counsel, financial advisors, and investment bankers, and in consultation with the Consultation Parties, have determined that the Stalking Horse Agreement and the associated Bid Protections provide the best opportunity to maximize value and to promote a robust auction process.

RELIEF REQUESTED

14. Pursuant to this Motion, and to compensate the Stalking Horse Purchaser for serving as the stalking horse whose bid will be subject to higher or better offers, the Debtors seek entry of an order approving (a) the Debtors' entry into the Stalking Horse Agreement and (b) the Bid Protections. The Debtors and Stalking Horse Purchaser believe the Bid Protections are reasonable in light of the benefits to the Debtors' estates of having a stalking horse bidder under a definitive Stalking Horse Agreement and the risk to Stalking Horse Purchaser that a third-party offer ultimately may be accepted. The Debtors further believe that the Bid Protections as described herein and contained in the Stalking Horse Agreement are necessary to preserve and enhance the value of the Acquired Assets.

A. The Relief Requested is a Sound Exercise of the Debtors' Business Judgment

15. Pursuant to section 105(a) of the Bankruptcy Code, a "[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of

the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See In re Channel One Comm., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Trilogy Dev. Co., LLC*, 2010 Bankr. LEXIS 5636, at *3-4 (Bankr. W.D. Mo. 2010); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is “a good business reason”).

16. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)); *see also In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the business judgment rule, “management of a corporation’s affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)). *See also In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment

agreements and noting that “[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors’ best economic interests, based on the Debtors’ best business judgment in those circumstances.”).

17. Approval of bid protections in connection with the sale of significant assets is analyzed under the business judgment standard and courts routinely find them to be appropriate in chapter 11 cases. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 657-58 (S.D.N.Y. 1992) (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”); *In re 995 Fifth Ave. Assoc., L.P.*, 96B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (holding that the business judgment standard protects break-up fees and other provisions negotiated in good faith).

B. The Break-Up Fee and Expense Reimbursement are Reasonable and Appropriate

18. In considering whether to approve bid protections under the business judgment rule, courts have considered, among other things, the following questions: “(1) is the relationship of the parties who negotiated the break-up fee tainted by self-dealing or manipulation; (2) does the fee hamper, rather than encourage, bidding; (3) is the amount of the fee unreasonable relative to the proposed purchase price?” *Integrated Res., Inc.*, 147 B.R. at 657. *See also In re Wintz Companies*, 230 B.R. 840, 846 (B.A.P. 8th Cir. 1999), *aff’d*, 219 F.3d 807 (8th Cir. 2000) (noting that courts permit break-up fees “provided the fees create an incentive for increased bidding in sales from bankruptcy assets”). As stated by Judge Barta in *In re President Casinos, Inc.*, 314 B.R. 786, 789 (E.D. Mo. 2004):

A break-up fee that is greater than the actual cost and expenses of the prospective purchaser should constitute a fair and reasonable percentage of the proposed purchase price, and should be

reasonably related to the risk, effort, and expenses of the prospective purchaser. *In re Integrated Resources, Inc.*, 147 B.R. 650, 662 (S.D.N.Y.1992) appeal dismissed (*In re Integrated Resources, Inc. (Official Committee of Subordinated Bondholders v. Integrated Resources, Inc.)*, 3 F.3d 49 (2nd Cir.1993).

19. Here, the Bid Protections are reasonable under the “business judgment rule.”

First, there was no self-dealing or manipulation between the parties. The Stalking Horse Purchaser is not affiliated with the Debtors in any respect and has been represented by counsel throughout the negotiation process. The Stalking Horse Agreement, including the Bid Protections, was the result of protracted negotiations among the Debtors and their professionals, on one hand, and the Stalking Horse Purchaser and its counsel, on the other hand. The Stalking Horse Agreement and the Bid Protections were entered into in good faith.

20. *Second*, the Bid Protections encourage, rather than hamper bidding. The Stalking Horse Agreement, which the Stalking Horse Purchaser entered into based on the protections afforded it through the Bid Protections, has provided a floor bid for the Acquired Assets, ensuring that the Debtors’ receive the highest and best price for such assets. Further, the Stalking Horse Purchaser expended significant time and resources in developing its stalking horse bid, to the benefit of other bidders who can use the Stalking Horse Agreement as a baseline bid. The Bid Protections provide an appropriate incentive to the Stalking Horse Purchaser to participate in the Auction as the stalking horse but are not so high as to discourage bidding.

21. *Third*, the Bid Protections are fair and reasonable in amount and are reasonably intended to compensate for the risk to the Stalking Horse Purchaser of the Stalking Horse Agreement being used to attract higher or better bids. Courts in the Eighth Circuit have held that the average range of reasonableness for break-up fees and expenses is approximately one to four percent of the purchase price. *In re Tama Beef Packing, Inc.*, 312 B.R. 192, 194 (N.D. Iowa 2004), cited approvingly but reversed on other grounds, *In re Tama Beef Packing, Inc.*, 321 B.R.

496, 498 (8th Cir. B.A.P. 2005) (“*Tama II*”); *In re Falcon Products Inc.*, Case No. 05-41108 (Bankr. E.D. Mo. Aug. 4, 2005) (B.S.S.) (approving 5% break-up fee on a \$4 million sale transaction); *In re Otologics, L.L.C.*, Case No. 12-47045 (Bankr. E.D. Mo. Aug. 22, 2012) (C.E.R.) (approving 3.6% break-up fee on a \$14 million sale transaction); *see also In re Riverstone Networks*, Case No. 06-10110 (Bankr. D. Del. Feb. 24, 2006) (approving 3% termination fee on a \$170 million sale transaction); *In re Great Northern Paper, Inc.*, Case No. 03-10048 (Bankr. D. Me. Feb. 18, 2003) (approving 5.0% break-up fee, plus expense reimbursement, on a \$91 million sale transaction).

22. The Break-Up Fee, together with the Expense Reimbursement, equal approximately 4% of the Cash Consideration, falling well within the acceptable range in the Eighth Circuit. Further, the Stalking Horse Purchaser has expended, and likely will continue to expend, considerable time, money and energy pursuing the sale, and has engaged in extended and lengthy good faith negotiations with the Debtors and their advisors.

23. After soliciting interest from potential bidders in accordance with the Bidding Procedures Order, the Debtors, in consultation with their advisors, determined that the stalking horse proposal from the Stalking Horse Purchaser will increase the likelihood of a sale to a contractually committed bidder at a price the Debtors believe is fair, while providing the Debtors with an opportunity to enhance the value to their estate through an auction process. Further, payment of the Bid Protections will not diminish the value of Debtors’ estates, as the Debtors do not intend to terminate the Stalking Horse Agreement and pay the Bid Protections, unless doing so would permit the Debtors to accept a better Bid, generating additional value for the estates.

24. The Debtors therefore request that the Court approve the Stalking Horse Purchaser as such and approve the Bid Protections under sections 105(a) and 363(b) of the Bankruptcy Code.

C. The Break-Up Fee and Expense Reimbursement are Necessary to Preserve the Value of the Debtors' Estates

25. As explained above, historically bankruptcy courts have approved bidding incentives similar to the Break-Up Fee and Expense Reimbursement under the business judgment rule. However, courts in the Eighth Circuit also have applied section 503(b) of the Bankruptcy Code to determine whether break-up fees or expenses are allowable as administrative expenses. *See In re Tama Beef Packing, Inc.*, 290 B.R. 90, (B.A.P. 8th Cir. 2003) (“*Tama I*”)⁵; *President Casinos, Inc.*, 314 B.R. at 788-89. The *Tama I* court agreed with the reasoning of the Third Circuit in *In re Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999), and held that “the determination of whether break-up fees or expenses are allowable under section 503(b)(1)(A) will be made in reference to general administrative expense jurisprudence.” The *O’Brien* court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some postpetition benefit to the debtor’s estate. *See O’Brien*, 181 F.3d at 533.

26. The Third Circuit defined at least two instances in which bidding incentives may benefit the estate. *First*, a break-up fee or expense reimbursement may be necessary to preserve the value of the estate if the assurance of the fee “promote[s] more competitive bidding, such as

⁵ In *Tama II*, the Bankruptcy Appellate Panel “revised,” but did not overrule, the analysis in *Tama I* concerning break-up fees, concluding that “the break-up fee discussion was superfluous” as the buyer’s claim at issue in the case was not a break-up fee, but simply an administrative expense.

by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *O’Brien*, 181 F.3d at 537. *Second*, if the availability of break-up fees and expenses were to “induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

27. As described above, the Break-Up Fee and Expense Reimbursement are reasonable and appropriate in light of the size and nature of the transaction and the considerable effort and expense that the Stalking Horse Purchaser has expended and will continue to expend in connection with its stalking horse bid. Further, the Break-Up Fee and Expense Reimbursement requested herein were a material inducement to the Stalking Horse Purchaser to enter into the Stalking Horse Agreement, which was negotiated between the Debtors, the Stalking Horse Purchaser and their respective advisors at arm’s length and in good faith. The Stalking Horse Purchaser’s bid, in turn, has established a minimum bid for others to exceed, thereby ensuring that during the Auction, if any, the Debtors will receive no less than the Purchase Price for the Acquired Assets and other bidders should be encouraged to participate in a robust auction process. Accordingly, the Break-Up Fee and Expense Reimbursement should be approved under section 503(b) and afforded administrative priority status under sections 503(b) and 507(a)(2) of the Bankruptcy Code.

REQUEST FOR WAIVER OF RULE 6004(h) STAY

28. Pursuant to Bankruptcy Rule 6004(h) an order authorizing the sale of property is stayed for fourteen (14) days after the entry of an order unless the Court orders otherwise. The Debtors request that this Court waive the stay imposed by Bankruptcy Rule 6004(h). The sale of

the Acquired Assets must be approved and consummated promptly to preserve the value of the Acquired Assets. In addition, the authority to pay the Bid Protections to the Stalking Horse Purchaser is a necessary component of its bid. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief. The Debtors note that similar requests to waive the stay imposed under Bankruptcy Rule 6004(h) are routinely granted. *See, e.g., In re Bakers Footwear Grp. Inc.*, No. 12-49658 (CER) (Bankr. E.D. Mo. Nov. 1, 2012); *In re ContinentalAFA Dispensing Company*, No. 08-45921 (KAS) (Bankr. E.D. Mo. Nov. 12, 2008); *In re the Great Atlantic & Pacific Tea Company, Inc.*, Case No. 15-23007 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Delia's, Inc.*, Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015); *In re Midway Games Inc.*, Case No. 09-10465 (KG) (Bankr. D. Del. June 3, 2009); *In re Nortel Networks Inc., et al.*, Case No. 09-10138 (Bankr. D. Del. Mar. 3, 2009).

NOTICE

29. In accordance with the Bidding Procedures Order, the Debtors have provided notice of this Motion to (a) the Core Parties, (b) any Non-ECF Parties (as those terms are defined in the *Order Pursuant to Section 105(a) of the Bankruptcy Code, 28 U.S.C. § 1404, Bankruptcy Rule 1015(c) and Local Rule 9004(C) (I) Denying Transfer of Division and (II) Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 123]), and (c) all entities known to have expressed a *bona fide* interest in purchasing any of the Acquired Assets since the Petition Date and such other potential purchasers identified by the Consultation Parties. All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and the Stalking Horse Agreement will also be made available on the Case Website. The proposed Stalking Horse

Approval Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Stalking Horse Approval Order, the amended proposed Stalking Horse Approval Order will be made available on the Debtors' Case Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary.

[Remainder of page intentionally left blank]

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

Dated: September 20, 2016
St. Louis, Missouri

Respectfully submitted,
CARMODY MACDONALD P.C.

/s/ Christopher J. Lawhorn

Christopher J. Lawhorn, # 45713MO
Angela L. Drumm, #57678MO
Colin M. Luoma, #65000MO
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
Facsimile: (314) 854-8660
cjl@carmodymacdonald.com
ald@carmodymacdonald.com
cml@carmodymacdonald.com

Local Counsel to the Debtors and
Debtors in Possession

- and -

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Alan W. Kornberg
Elizabeth R. McColm
Sarah Harnett
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
akornberg@paulweiss.com
emccolm@paulweiss.com
sharnett@paulweiss.com

Counsel to the Debtors and
Debtors in Possession

EXHIBIT A
STALKING HORSE AGREEMENT

ASSET PURCHASE AGREEMENT

DATED AS OF SEPTEMBER 20, 2016

BY AND BETWEEN

MFR II, LLC, AS BUYER,

AND

NORANDA ALUMINUM, INC., AS SELLER

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of September 20, 2016 (the “Execution Date”), is made and entered into by and between **MFR II, LLC**, a Delaware limited liability company (“Buyer”) and **NORANDA ALUMINUM, INC.**, a Delaware corporation (“Seller”). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in Article 1.

RECITALS

WHEREAS, on February 8, 2016, Seller and certain of its 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, Seller desires to sell to Buyer all of the Acquired Assets and to assign to Buyer all of the Assumed Liabilities, Buyer desires to purchase from Seller 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, 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:

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(d).

“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 Seller, including those consisting of all accounts receivable in respect of services rendered or products sold to customers by Seller, 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 Seller 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(j).

“Affiliate” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

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

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

“Alternative Transaction” means a transaction to purchase a substantial part of the Acquired Assets by the Successful Bidder pursuant to, and as defined in, the Bidding Procedures, other than Buyer or an Affiliate of Buyer.

“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 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.

“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 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 Seller, or for which Parent or Seller has any obligation to sponsor, maintain or contribute to, or for which Parent or 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 Seller has any present or future right to benefits, except for any Multiemployer Plan.

“Bid Protections” has the meaning set forth in Section 10.2(b).

“Bid Protections Order” means an order of the Bankruptcy Court approving the Bid Protections.

“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 July 20, 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.

“Breakup Fee” means the “break-up fee” approved by the Bankruptcy Court.

“Business” means the business and operations of Seller 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 Facility prior to the idling of the Facility, 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.

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

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

“CNM” means the City of New Madrid, Missouri.

“CNM ROFR” means the right of first refusal held by CNM with respect to the CNM ROFR Subject Property.

“CNM ROFR Subject Property” means the portion of the Owned Real Property described in Exhibit D to the SJIP Agreement.

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

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

“Confidential Information” has the meaning set forth in Section 11.2.

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

“Contract” means any legally binding agreement, contract, obligation, undertaking, lease (including Lessee 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 Seller that must be paid or otherwise satisfied to cure all of Seller’s 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.

“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 Seller 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 Seller 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).

“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 Legal

Requirements relating to the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, storage, disposal, distribution, importing, labeling, testing, processing, Release, threatened Release, control or remediation of Hazardous Substances.

“Environmental Permits” means all material Permits that are required under or pursuant to Environmental Laws.

“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 Seller, solely used, or held for use, in connection with the operation of the Business (including Seller’s interest in such “Equipment” solely used, or held for use, in connection with the operation of the St. Jude Industrial Park), wherever located, including communications equipment, information technology assets, vehicles, 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.

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

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

“Expense Reimbursement” means the “expense reimbursement” amount approved by the Bankruptcy Court for actual and documented out-of-pocket fees and expenses, including fees and expenses of legal advisors, financial advisors and accountants, incurred by Buyer in connection with this Agreement and the transactions contemplated hereby.

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

“Facility” means the aluminum reduction plant and fabrication facilities of Seller located in New Madrid, Missouri.

“FAI Landfill CD” means that certain certificate of deposit transferred to the Bank of New Madrid, as escrow agent, as financial insurance for any post-closure requirements in connection with the operating permit issued by the Missouri Department of Natural Resources in connection with the FAI landfill.

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

“Good Faith Deposit” means One Million Three Hundred Thousand Dollars (\$1,300,000).

“Governing Documents” means, with respect to any particular entity: (a) if a corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person in question; (f) all equity holders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of the entity in question or relating to the rights, duties and obligations of the equity holder of such entity; and (g) any amendment or supplement to any of the foregoing.

“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, hazardous substance, pollutant, contaminants, chemical waste, toxic substance, petroleum-based material, asbestos, PCB or radioactive material.

“Improvements” means the buildings, plants, structures, fixtures, systems, facilities, infrastructure and other improvements affixed or appurtenant to (i) the Owned Real Property and (ii) the Leased Real Property that is subject to the St. Francis Lease.

“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 GAAP, 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 by 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(b).

“IRS” has the meaning set forth in Section 3.2(e).

“Knowledge” means, with respect to any matter in question, in the case of Seller, 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); provided that any such individual listed on Schedules 1.1(a)(i) and 1.1(a)(ii) shall be deemed to have actual knowledge of any matter if such person would have been aware of such matter after reasonable inquiry.

“Leased Real Property” means the interests in real property set forth on Schedule 1.1(b), that are let, leased, subleased or occupied by Seller, as tenant, subtenant, lessee, sublessee, licensee or in which Seller had been granted a possessory interest or right to use or occupy all or any portion of the same (each such lease, a “Lessee Lease,” and collectively, the “Lessee 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 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.

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

“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).

“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 Seller to consummate the transactions contemplated by this Agreement or to perform any of its 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 commencement or prosecution of the Bankruptcy Case; (ii) any reasonably anticipated effects resulting from the idling of the Facility; (iii) the execution and delivery of this Agreement or the announcement thereof; (iv) changes in Legal Requirements or GAAP; (v) any specific action required to be taken (or omitted) by this Agreement or taken (or omitted) at the written request of Buyer; (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) acts of God (including earthquakes, storms, severe weather, fires, floods and natural catastrophes); (viii) any breach of this Agreement by Buyer; or (ix) 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 (iv), (vi) and (ix), 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 Seller.

“Material Contract” means any Contract of Seller relating to the Acquired Assets pursuant to which Seller is reasonably expected to incur potential aggregate Liabilities in an amount greater than or equal to \$250,000 per annum and has a term of greater than one year.

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

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

“Objections Notice” has the meaning set forth in Section 3.2(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 Seller, “Ordinary Course of Business” shall take into account the business and operating practices utilized by Seller from the commencement of the Bankruptcy Case and, to the extent applicable to time periods prior to the idling of the Facility, as such business was then conducted, and, to the extent applicable to time periods after

the idling of the Facility, as the assets previously used to conduct the Business have been maintained since the idling of the Facility.

“Outside Date” has the meaning set forth in Section 10.1(b)(ii).

“Owned Real Property” means the real property described on Schedule 1.1(c), and all right, title and interest of Seller therein, together with all of Seller’s right, title and interest in and to the following: (i) all buildings, structures, systems, hereditaments and Improvements located in, under, on or through such real property or any portion thereof; (ii) all licenses, governmental land use approvals and permits, rights-of-way, appurtenant and beneficial easements, and all other rights, privileges and appurtenances belonging or in any way pertaining to such real property or any portion thereof; and (iii) any landlord’s leasehold interest pursuant to the Lessor Leases listed on Schedule 5.4(b).

“Park Board” means the St. Jude Industrial Park Board referenced in the SJIP Agreement.

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

“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.

“Permits” means any and all permits (including Environmental 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 Seller are of or from any Governmental Authority, in each case solely relating to Seller’s operation of the Business and ownership of the Acquired Assets.

“Permitted Encumbrances” means those Encumbrances listed on Schedule 1.1(d).

“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.

“Pre-Closing Apportioned Obligations” means all unpaid Taxes apportioned to Pre-Closing Tax Periods in accordance with Section 7.7(a) of this Agreement.

“Pre-Closing Tax Period” means any taxable period that, regardless when assessed, ends on or before the Closing Date and the portion of any Straddle Period through the end of the Closing Date.

“Pre-Paid Expenses” means 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 Seller’s rights, title and interests 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 or Leased Real Property; and (v) all easements, licenses, rights and appurtenances relating to the foregoing in which Seller has a legally recognized interest.

“Release” means, except as authorized by a valid Permit issued under Environmental Law, (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.

“Response Period” has the meaning set forth in Section 3.2(c).

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

“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 Seller, 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, 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.

“Securities Act” means the Securities Act of 1933.

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

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

“SJIP Agreement” That certain St. Jude Industrial Park Board Agreement, by and between Seller and the City of New Madrid, dated April 4, 1994.

“Spent Material” means all spent potliner materials in the 508 Aluminum Reduction Cells located at the Facility.

“St. Francis Lease” means that certain lease between Seller and St. Francis Levee District of Missouri.

“Straddle Period” has the meaning set forth in Section 7.7(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.

“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), in each case, whether or not disputed, 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 Policy” means a title policy issued by First American Title Insurance Company (or such other nationally-recognized title insurer mutually agreed by Buyer and Seller), which policy shall be on the most current ALTA form available in the jurisdiction in which the Owned Real Property is located; name Buyer as the insured; insure Buyer as the fee owner of the Owned Real Property; insure Buyer’s interest in each appurtenant easement that is a Permitted Encumbrance on the Owned Real Property; include all available endorsements reasonably requested by Buyer (which endorsements shall include but not be limited to, but only to the extent available in the jurisdiction in which the Owned Real Property is located and only to the extent an ALTA survey is not required for same, endorsements for extended coverage, zoning compliance, vehicular access to publically-dedicated rights-of-way for each parcel on which the Equipment, Inventory and other tangible Acquired Assets are located, utility access for each parcel on which the Equipment, Inventory or other tangible Acquired Assets are located, subdivision compliance, contiguity and tax parcels); raise and include no exceptions to title other than Permitted Encumbrances; and provide an amount of insurance no less than the lesser of (i) the fair market value of the Owned Real Property; and (ii) the Purchase Price.

“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, Deeds and any other agreements, instruments or documents entered into at the Closing pursuant to this Agreement.

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

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

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, and including any similar state or local Legal Requirement.

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.

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. Any information set forth in one section of the Disclosure Schedules will be deemed to apply to other sections of the Disclosure Schedules only if such disclosure makes a specific reference or cross-reference thereto or with respect to which the relevance of such exception is reasonably apparent on the face of the disclosure of such exception set forth in the Disclosure Schedules.

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.

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 Seller, 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 Seller, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring either 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, 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 Seller, free and clear of all Encumbrances (other than Permitted Encumbrances and Assumed Liabilities), all of Seller’s right, title and interest in, to or under the 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 Seller, as the same shall exist at the Closing (collectively, the “Acquired Assets”). For all purposes of and under this Agreement, the Acquired Assets shall consist of the following items, assets and properties (whether or not such assets are otherwise described in Section 2.2):

(a) (i) the Owned Real Property (other than the CNM ROFR Subject Property); (ii) in the event that CNM does not exercise the CNM ROFR, the CNM ROFR Subject Property; (iii) Seller’s interests in and to each Lessee Lease that is an Assumed Contract and in and to the associated Leased Real Property; (iv) Seller’s interests in and to each Lessor Lease that is an Assumed Contract; and (v) Seller’s rights, title and interests with respect to (A) all Improvements, (B) all strips and gores and any land lying in the bed of any public road, highway or other access way, open or proposed, adjoining the Owned Real Property or Leased Real Property and (C) all easements, licenses, rights and appurtenances relating to the foregoing in which Seller has a legally recognized interest.

(b) all inventory (of any kind or nature), including, without limitation, the inventory listed in the inventory report dated August 29, 2016, merchandise and goods solely related to the Business and maintained, held or stored by Seller in connection therewith, 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”);

(c) all Equipment owned by Seller and located on the Real Property, including the Equipment owned by Seller located on the Real Property and (i) listed in that certain summary report dated August 4, 2016, or (ii) set forth on Schedule 2.1(c);

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

(e) except to the extent prohibited by Legal Requirements, any rights of Seller to the warranties and licenses received from manufacturers and sellers of the Equipment (that is included in the Acquired Assets pursuant to Section 2.1(c) above), 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 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) [Intentionally Deleted];

(h) to the extent transferable to Buyer in accordance with its terms, the FAI Landfill CD;

(i) [Intentionally Deleted];

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

(k) to the extent not prohibited by Legal Requirements and not subject to attorney-client privilege or other work product privilege, all Documents relating solely to the Acquired Assets including, without limitation, data, drawings, engineering and manufacturing data and other technical information and data, and all other business and other records; provided, that 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 11.2;

(l) except as set forth on Schedule 2.1(l), 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 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, 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; and

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

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 following assets (collectively, the “Excluded Assets”) to Buyer, and Seller shall retain all right, title and interest to, in and under, and all Liabilities with respect to, the Excluded Assets:

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

(b) any (i) employee personnel files or records, and (ii) Benefit Plans 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 Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest in or issued by Seller, and (ii) any shares of capital stock or other equity interest in or issued by any entity in which 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 Seller holds an equity interest;

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

(e) any documents that 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 11.2, 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;

(i) except as set forth in Section 2.1(h), 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 Seller

(j) all current and prior director and officer insurance policies of 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 Seller under this Agreement or any other Transaction Document;

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

(m) except as set forth on Schedule 2.1(m), any surety bonds or other financial assurances, any cash of 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 Seller, any Debtor or any of their Subsidiaries;

(q) any claims for refunds of Taxes actually paid by Seller prior to the Closing Date;

(r) all Tax records and Tax workpapers;

(s) all Intellectual Property utilizing the names "Noranda", "Noralinc" "Norandal", "Stannbl", "Gramercyal" or "Noralnm" or variations or derivations thereof, including those names set forth on Schedule 2.2(s);

(t) all Accounts Receivable; and

(u) all Pre-Paid Expenses.

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 Seller (and only those Liabilities of Seller) which are enumerated in this Section 2.3 (the "Assumed Liabilities"). For the avoidance of doubt, Buyer shall assume the Assumed Liabilities and no others. The following Liabilities of Seller (and only the following Liabilities) shall constitute, without duplication, the Assumed Liabilities:

(a) all Liabilities under the Assumed Contracts, including Cure Costs;

(b) all Liabilities relating to the removal, transportation and disposal of all Spent Material;

(c) all Liabilities arising out of the ownership of the Acquired Assets from and after the Closing;

(d) all Liabilities of 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;

(e) [Intentionally Deleted]

(f) all Liabilities for any 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 7.7(a)).

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, Seller, the Business or the Acquired Assets, of any kind or nature, whether or not direct or indirect, and Seller shall be solely and exclusively liable with respect to all Liabilities of Seller, other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the “Excluded Liabilities”), including:

(a) any Liability owed to, or for the benefit of, any Seller Employee, Benefit Plan or Multiemployer Plan pursuant to any Legal Requirement (including ERISA);

(b) any Liability of Seller to the extent that it relates to an Excluded Asset and is not expressly assumed by Buyer pursuant to Section 2.3;

(c) any Liability of Seller with respect to Pre-Closing Apportioned Obligations; and

(d) except as set forth in Section 2.3, any Liability of Buyer arising from successor or transferee Liability (whether imposed by Legal Requirement, Contract or otherwise) in connection with the transactions contemplated herein.

2.5 **Assignment and Assumption of Contracts.**

(a)

(i) Schedule 2.5(a)(1) sets forth a list of all executory Contracts (including Lessee Leases and Lessor Leases) solely relating to the Business or the Acquired Assets to which 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 Seller is party, but which Seller is retaining (the “Retained Contracts”), which Schedule 2.5(a)(2) may be updated by Seller 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 Seller that are listed on Schedule 2.5(a)(2) shall not be considered Available Contracts. On or before the Business Day prior to entry of the Sale Order, 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 Seller 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 Seller 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 Seller, (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) 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, Seller 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 Seller 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) Seller 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 between Buyer and Seller or as determined by the Bankruptcy Court) and assume, 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 Seller (any such Contract, a “Previously Omitted Contract”), Seller 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 Seller, no later than five (5) Business Days following notification of such Previously Omitted Contract from Seller, 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), 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 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 each of Seller and Buyer, to the Cure Costs or the assumption and assignment of its Contract. If the counterparties, Seller and Buyer are unable to reach a consensual resolution with respect to the objection, Seller shall seek an expedited hearing before the Bankruptcy Court to determine the Cure Costs and approve the assumption. If no objection is served on Seller and Buyer, Seller 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 Seller, such consent or approval is required but not obtained with respect to an Assumed Contract or a Permit, neither Seller 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 (except as set forth under Section 8.4); 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, Seller shall reasonably cooperate, at Buyer's sole cost and expense (provided, that Seller provides written evidence and invoices of such costs and expenses), 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 Seller against any party to the applicable Assumed Contract or Transferred Permit arising out of the breach or cancellation thereof by such party; provided, however, that 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.

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, Seller 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, Seller shall execute and deliver to Buyer such further instruments and certificates as reasonably requested by Buyer (i) to vest, perfect or confirm ownership (of record or otherwise) in Buyer, of Seller's right, title or interest in, to or under any or all of the Acquired Assets and Business, including the Owned 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, 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, Seller shall not 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 Seller for any out-of-pocket expenses incurred by Seller 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, including any related costs and expenses (except to the extent Buyer agrees to reimburse Seller for any out-of-pocket expenses incurred by Seller 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 thirteen million Dollars (\$13,000,000), including the Good Faith Deposit provided by Buyer to Seller under the Bidding Procedures; provided, however, that, if the CNM ROFR Subject Property is not acquired by Buyer pursuant to this Agreement, the Cash Consideration shall be reduced by the amount of the Purchase Price allocated to the CNM ROFR Subject Property as set forth on Schedule 3.2(b); and

(b) the assumption by Buyer of the Assumed Liabilities from Seller, 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 **Allocation of Purchase Price.**

(a) Buyer and Seller agree that, for Buyer’s and Seller’s 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 3.2.

(b) Within one hundred twenty (120) days following the Closing Date, Buyer shall prepare and deliver to Seller 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”); provided, however, that with respect to the CNM ROFR Subject Property, if the CNM ROFR Subject Property is acquired by Buyer pursuant to this Agreement, the portion of the Purchase Price allocated to the CNM ROFR Subject Property shall be as set forth on Schedule 3.2(b).

(c) Seller shall have a period of thirty (30) Business Days after the delivery of an Allocation Statement (the “Response Period”) to present in writing to Buyer notice of any

objections that Seller may have to the allocations set forth therein (an “Objections Notice”). Unless Seller provides an Objections Notice during the Response Period, the Allocation Statement provided by Buyer shall be binding on the Parties without further adjustment.

(d) If Seller raises any objections within the Response Period, Buyer and Seller 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 referred for resolution to a firm of independent nationally recognized accountants reasonably chosen and mutually accepted by both Parties (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 Seller in inverse proportion to the extent to which the Accounting Referee agrees with Buyer or Seller, 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 3.2(c) and 3.2(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, Seller or Buyer, as the case may be, shall promptly notify the other Party of such proposed allocation. Seller 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 3.2.

3.3 **Withholding**. Buyer shall be entitled to deduct and withhold from the Purchase Price otherwise payable pursuant to this Agreement to Seller 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 Seller. 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 Seller’s 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 8 and Article 9 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 Seller 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 Seller:

- (a) the Cash Consideration, less the Good Faith Deposit, by wire transfer of immediately available funds to the account designated by Seller prior to the Closing Date;
- (b) the Assumption Agreement, duly executed by Buyer;
- (c) each other Transaction Document to which Buyer is a party, duly executed by Buyer;
- (d) the certificates of Buyer to be received by Seller pursuant to Sections 9.1 and 9.2; and
- (e) such other documents as Seller 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 **Seller's Deliveries.** At the Closing, Seller shall deliver (and/or cause one or more of its Affiliates to deliver) to Buyer, in form reasonably satisfactory to Buyer:

- (a) the Bills of Sale, Deeds and the Assumption Agreement (in each case, relating to the Acquired Assets), and each other Transaction Document to which Seller is a party, duly executed by Seller;
- (b) a certified copy of the Sale Order;
- (c) the certificates of Seller to be received by Buyer pursuant to Sections 8.1 and 8.2;
- (d) certificates executed by Seller, in the form prescribed under Treasury Regulation Section 1.1445-2, that either (i) Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code or that (ii) the Acquired Assets acquired from Seller do not constitute a U.S. real property interest within the meaning of section 897(c) of the Code;
- (e) a certificate of the secretary of Seller certifying as complete and accurate as of the Closing Date: (i) attached certified copies of the Governing Documents of Seller; and

(ii) attached copies of all requisite resolutions or actions of Seller's board of directors approving the execution and delivery of this Agreement, the Transaction Documents and the consummation of the transactions contemplated hereby and thereby;

(f) affidavits and indemnities in customary form, as reasonably required by Buyer's title insurer and such other documentation reasonably necessary to induce the title insurer to issue the Title Policy; and

(g) 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 SELLER

Seller hereby represents and warrants to Buyer as of the date hereof as follows, except as disclosed in the Disclosure Schedules:

5.1 **Organization; Good Standing.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Subject to the applicable provisions of the Bankruptcy Code, Seller has all requisite corporate power and authority to own or lease and to operate and use its properties and to carry on its business in the Ordinary Course of Business. 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) Seller has, subject to entry of the Sale Order, the requisite corporate power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which 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 Seller and the consummation by Seller of the transactions contemplated herein and therein have been duly and validly authorized by all requisite corporate action on the part of Seller. Subject to entry of the Sale Order, this Agreement has been duly and validly executed and delivered by Seller and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to entry of the Sale Order, this Agreement and the other Transaction Documents to which Seller is (or will be) a party constitute (or, when entered into, will constitute), with respect to Seller, the legal, valid and binding obligations of Seller, enforceable against 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) for entry of the Sale Order, (ii) for notices, filings and consents required in connection with the Bankruptcy Case, including the requirements of the Bidding Procedures Order, and (iii) for the notices, filings and consents set forth on Section 5.2(b) of the Disclosure Schedules, Seller 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 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 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 Governing Documents of Seller or (ii) any Order binding upon Seller, (b) (i) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under any license or Permit held by Seller, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Authority or (ii) result in a 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 imposition or creation of any Encumbrance (other than Permitted Encumbrances or Encumbrances that will be released at the Closing in accordance with the Sale Order) upon or with respect to any of the Acquired Assets.

5.4 **Real Property.**

(a) **Owned Real Property.** Except for the Permitted Encumbrances, at the Closing, Seller will have good and marketable fee title in the Owned Real Property and valid leasehold interests in the Leased Real Property pursuant to any Lessee Leases that are Assumed Contracts. As of the date hereof, 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 thereof except as disclosed in the Schedules hereto for Permitted Encumbrances and for Lessor Leases. As of the Closing Date, none of the Owned Real Property will be subject to any such lease or grant except for the Lessor Leases that are Assumed Contracts and the Permitted Encumbrances. There are no current, pending or, to Seller's Knowledge, threatened defaults, litigation or condemnation proceedings relating to any of the Owned Real Property, nor will there be any such defaults, litigation or proceedings at the Closing. There are no outstanding options or rights of first refusal to purchase any of the Owned Real Property or any interest therein, nor will there be any such options or rights of first refusal at the Closing.

(b) **Leases.** Section 5.4(b) of the Disclosure Schedules lists, as of the Execution Date, all unexpired leases, subleases, licenses, sublicenses, occupancy or other agreements whereby Seller leases, subleases, licenses or grants an interest in any Owned Real

Property to a third party (the “Lesser Leases”). Seller has made available to Buyer, to the extent that they are in Seller’s possession or control, true, complete and correct copies of each Lease and amendment or modification thereto. Other than as a result of the Bankruptcy Case, Seller is not in breach of or in default under any Lease and, to Seller’s Knowledge, no other party to any Lease has given Seller written notice of or made a claim with respect to any breach or default by Seller thereunder (other than as a result of the Bankruptcy Case). To Seller’s Knowledge, 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 default or breach of any material term by any party to a Lease. To Seller’s Knowledge, none of the Leases are subject to any further sublease or grant to any third-party of any right to the use, occupancy or enjoyment of the Owned Real Property or Leased Real Property. Seller has not received written notice of any pending or threatened condemnation or other proceedings or claims relating to Seller’s interest in any of the Leased Real Property.

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 Owned Real Property, Seller is not the subject of any pending or threatened liability or obligation under or pursuant to Environmental Laws nor has Seller received any 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 Seller, threatened arising out of or relating to any violation of any applicable Environmental Law in connection with the Owned Real Property, including with respect to the treatment, storage, recycling or handling of any Hazardous Substances by or on behalf of Seller 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 Liability under Environmental Laws, and (d) Seller is in compliance with Environmental Laws with respect to the Owned Real Property.

5.6 **Title to Acquired Assets.** At the Closing, Seller will have good and valid title to 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) Permitted Encumbrances.

5.7 **Taxes.** All 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 Seller 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 Seller’s Knowledge, threatened against or related to Seller or the Acquired Assets, by or before any arbitrator or Governmental Authority.

5.9 **Compliance with Legal Requirements.** Except with respect to compliance with Environmental Law, which is addressed in Section 5.5, Seller is not in violation of any Legal Requirement applicable to the Business or the Acquired Assets and no event has occurred or circumstance exists that (with or without notice or lapse of time) that may reasonably be

expected to constitute or result in a violation by Seller of, or a failure of Seller to comply with, any Legal Requirement applicable to the Business or Acquired Assets.

5.10 **Permits.** Section 5.10 of the Disclosure Schedules sets forth, as of the date hereof, all of the Permits held by Seller related to the Business or the Acquired Assets. Such Permits are valid and in full force and effect and Seller is in compliance with all of the terms and requirements of each such Permit. No event has occurred or circumstance exists that would result in a violation or revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Permit, nor has Seller received any notice concerning the foregoing. All renewal and maintenance applications for such Permits have been duly filed with the appropriate Governmental Authorities.

5.11 **Brokers or Finders.** Seller has 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 (or any Affiliate of Buyer) is or will become liable.

5.12 **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, SELLER MAKES NO REPRESENTATION OR WARRANTY, STATUTORY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF ITS 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 SELLER 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 SELLER.

5.13 **Condition of Acquired Assets.** The Acquired Assets have been maintained in accordance with all Legal Requirements.

5.14 **Park Board.** (i) The Park Board is a trust duly formed, validly existing and in good standing under the laws of the State of Missouri and (ii) except for the Bankruptcy Case (and proceedings related thereto), there is no Proceeding or Order pending or, to Seller's Knowledge, threatened against or related to the Park Board, by or before any arbitrator or Governmental Authority.

5.15 **SJIP Agreement.** (i) Seller has provided Buyer with a true and correct copy of the SJIP Agreement; (ii) to Seller's Knowledge, the SJIP Agreement is not subject to any Legal Proceedings before a Governmental Authority; and (iii) Seller has provided Buyer with a copy of the 2015 operating statement of the Park Board under the SJIP Agreement.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

6.1 **Organization and Good Standing.** Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. 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 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 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 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 and assuming the due execution by Seller.

(b) Except 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 Governing Documents of Buyer or (ii) any Order binding upon Buyer or (b) violate, conflict with, or result in a breach of any of the terms of, or constitute a 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 respect and that, in each case, is to the business of Buyer, or (ii) any 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 Seller (or any Affiliate of 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 neither Seller, nor 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 Seller 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), neither Seller, nor 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 Seller furnished or made available to Buyer and its Representatives in respect of the Business, and Seller's operations, assets, stock, Liabilities, condition (financial or otherwise) or prospects. Buyer acknowledges that neither Seller, nor any of its Affiliates or any other Person, directly or indirectly, has 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 Seller, 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 Seller, 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. Neither Seller nor any other Person (including any officer, director, member or partner of Seller or any of its 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; CERTAIN POST-CLOSING AGREEMENTS

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 10, Seller 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 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 Seller. Notwithstanding the foregoing, Buyer and its Representatives shall not (A) have access to personnel records of Seller relating to individual performance or evaluation records, medical histories or other information which in Seller’s good faith opinion is sensitive or the disclosure of which could subject 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 Seller’s properties without prior written consent from Seller. 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 Seller herein.

(b) Notwithstanding the foregoing but subject in all respects to the Bidding Procedures Order, this Section 7.1 shall not require Seller 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 Seller, is reasonably likely to result in any violation of any Legal Requirement or any Contract to which Seller is a party or cause any privilege (including attorney-client privilege) or work product protection that Seller would be entitled to assert to be waived or (ii) if Seller or any of its 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 Seller (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 Seller (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 August 2, 2016, by and between Seller and MFR, LLC, the terms of which are incorporated herein by reference (the “Confidentiality Agreement”).

7.2 Operations Prior to the Closing Date. Seller covenants and agrees 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, Seller shall use commercially reasonable efforts to:

(a) maintain, preserve and protect the Acquired Assets in good operating condition and repair, except for ordinary wear and tear;

(b) keep in full force and effect all material rights relating to the Business and the Acquired Assets;

(c) continue in full force and effect the insurance coverage for the Acquired Assets;

(d) comply with all Legal Requirements and contractual obligations applicable to the Acquired Assets and the operations of the Business and the Facility, including promptly delivering to Buyer copies of any notices it receives from any Governmental Authority

with respect to any violations of applicable Legal Requirements with respect to the Acquired Assets;

(e) preserve and maintain all Governmental Authorizations related to the Business or Acquired Assets;

(f) subject to the terms of this Agreement, upon request from time to time, execute and deliver all documents and do all other acts that may be reasonably necessary or desirable to consummate the transactions contemplated by this Agreement;

(g) promptly notify Buyer after learning of any material damage to or destruction of all or any material portion of the Owned Real Property or Acquired Assets, reasonable wear and tear excepted; and

(h) not sell or lease any of the Acquired Assets, even if such sale or lease is in the Ordinary Course of Business.

7.3 **Regulatory Matters; Cooperation.**

(a) [Intentionally Deleted]

(b) Seller, 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, Seller, 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 8 and Article 9 to be satisfied; (ii) defending of any Proceedings challenging this Agreement or the consummation of the transactions 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 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) Seller, 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 Seller, 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) [Intentionally Deleted]

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 8, with respect to Seller, or Article 9, with respect to Buyer, not to be fulfilled by the Outside Date.

7.5 **Bid Protections Order.** Seller shall use commercially reasonable efforts to secure entry of the Bid Protections Order prior to September 28, 2016.

7.6 **Other Actions.** Buyer covenants and agrees that, except (w) as expressly contemplated by this Agreement, (x) with the prior written consent of Seller (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 Seller to consummate the Closing in accordance with the terms hereof or to materially delay such consummation.

7.7 **Taxes.**

(a) For purposes of determining the amount of the Pre-Closing Apportioned Obligations for any Tax period that, regardless when assessed, begins before and ends after the Closing Date (a "Straddle Period"), the amount apportioned to the Pre-Closing Tax Period shall equal the quotient of (x) the total amount of the relevant Taxes for the Straddle Period multiplied

by (y) a fraction, the numerator of which equals the number of days of such Straddle Period through (and including) the Closing Date and the denominator of which equals the total number of days in the Straddle Period. Notwithstanding anything to the contrary herein, all Taxes payable in respect of a Pre-Closing Tax Period shall remain the obligation of Seller.

(b) Seller 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 mitigation of any Tax relating to the Transaction Documents, the prosecution or defense of any claim, suit or proceeding relating to any Tax. Notwithstanding the foregoing but subject in all respects to the Bidding Procedures Order, this Section 7.7 shall not require Seller or Buyer to (x) 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 Seller or Buyer, as applicable, is reasonably likely to result in any violation of any Legal Requirement or any Contract or cause any privilege (including attorney-client privilege) or work product protection to be waived or (ii) if Seller (or any of its 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 or (y) engage in any action or provide any information or assistance if such action would result in any material unreimbursed cost or expense; 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 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 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.

7.8 **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 Seller 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 Seller’s Representatives available to testify before the Bankruptcy Court.

7.9 **Employee Matters.**

(a) Employees. Buyer does not intend to hire any employees of Seller and all Liabilities associated with the termination of any of Seller’s employees who engaged in performing services related to the Acquired Assets prior to the Closing Date are Excluded Liabilities that are the sole responsibility of Seller. Buyer shall not be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention

payments, to any Seller Employee on account of any termination of such Seller Employee's employment on or before the Closing Date, and such benefits (if any) shall remain Excluded Liabilities and obligations of Seller.

(b) WARN Act. With respect to the Seller Employees, Seller will have full responsibility under the WARN Act relating to any act or omission of Seller prior to and on the Closing Date with respect to any state or federal WARN obligation.

7.10 **Post-Closing Books and Records; Properties; and Personnel**. From and after the Closing Date for a period of three (3) years, Buyer shall provide Seller (and its 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 Seller 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 Seller to wind down the Business. During such three (3) year period, Seller (and its Representatives) shall be permitted to make copies of any books and records described in this Section 7.10, 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 Seller with a reasonable opportunity to remove or copy such records to be disposed of at Seller's expense. For the avoidance of doubt, nothing in this Section 7.10 shall be seen as limiting the Parties' obligations under Section 7.7(b).

7.11 **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 "Noralnm", including those names set forth on Schedule 2.2(s), or any similar names indicating affiliation with Seller, any of its Affiliates or the business or activities engaged in by Seller or any of Seller's Affiliates prior to or after the Closing, provided, however, that Buyer shall be entitled to use or employ any of those trade names identified on Schedule 2.2(s) to inform third parties (including customers and suppliers) that the Business (i) was formerly owned by Seller and (ii) is now owned by Buyer.

7.12 **Spent Material**. Buyer shall remove, transport and dispose of all Spent Material from the Facility in accordance with all applicable Environmental Laws. In connection therewith, Buyer shall (i) procure an appropriate financial instrument or financial assurance guaranteeing such removal, transport and disposal, (ii) provide Seller with documentation that all Spent Material has been disposed of in a licensed Sub Title C facility permitted to accept Spent Material, and (iii) provide a report from a third-party certified engineer that all Spent Material has been removed and disposed of in accordance with this Section 7.12.

7.13 **Break-Up Fee and Expense Reimbursement**. Within two (2) Business Days following the Execution Date, Seller shall make an appropriate filing with the Bankruptcy Court seeking an order approving a "break-up fee" of three percent (3%) of the Purchase Price and an "expense reimbursement" amount of \$130,000 for which Seller shall be liable under the circumstances set forth in Section 10.2(b) for actual and documented out-of-pocket fees and

expenses, including fees and expenses of legal advisors, financial advisors and accountants, incurred by Buyer in connection with this Agreement and the transactions contemplated hereby.

ARTICLE 8

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:

8.1 **Accuracy of Representations.** The representations and warranties of Seller 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 8.1 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 from Seller to such effect signed by a duly authorized officer of Seller.

8.2 **Seller's Performance.** The covenants and agreements that Seller 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 Buyer shall have received a certificate from Seller to such effect signed by a duly authorized officer of Seller.

8.3 **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.

8.4 **Governmental Authorizations.** If applicable, the approvals and consents listed on Schedule 8.4 shall have been obtained.

8.5 **Seller's Deliveries.** Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

8.6 **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.

8.7 **Title Policy.** The issuer of the Title Policy shall have indicated in writing to Buyer that it is prepared to issue the Title Policy subject only to receipt of payment for the associated premium.

ARTICLE 9

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER TO CLOSE

The obligations of Seller 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 Seller in writing, in its sole and absolute discretion:

9.1 **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 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 on the ability of Buyer to consummate the transactions contemplated by this Agreement. Seller shall have received a certificate from Buyer to such effect signed by a duly authorized officer of Buyer.

9.2 **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 Seller shall have received a certificate from Buyer to such effect signed by a duly authorized representative of Buyer.

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.** If applicable, the approvals and consents listed on Schedule 9.4 shall have been obtained.

9.5 **Buyer's Deliveries.** Each of the deliveries required to be made to Seller pursuant to Section 4.2 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.

ARTICLE 10

TERMINATION

10.1 **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 Seller and Buyer.

(b) by written notice from either Seller 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;

(ii) if the Closing shall not have occurred on or prior to October 31, 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 8 and Article 9 have been satisfied or waived (to the extent such conditions may be waived) other than the conditions set forth in Sections 8.4 and 9.4, then the Outside Date shall automatically be extended until ten (10) 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 10.1(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 10.1(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 8.4 and 9.4 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 Seller 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 8 not to be satisfied and (B) cannot be cured (and was not cured) within ten (10) Business Days after Buyer notifies Seller of such breach in writing; provided, that Buyer shall not have a right of termination pursuant to this Section 10.1(c) if it is then in material breach of any of its agreements, covenants, representations or warranties contained herein or in the Sale Order; provided, further, that any purported termination of this Agreement by Seller pursuant to Section 10.1(b)(ii) shall be deemed to be a termination by Buyer pursuant to this Section 10.1(c) if Seller is entitled to terminate this Agreement pursuant to this Section 10.1(c) at the time of such purported termination.

(d) by written notice from Seller 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 9 not to be satisfied and (B) cannot be cured (and was not cured) within ten (10) Business Days after Seller notifies Buyer of such breach in writing; provided, that Seller shall not have a right of termination pursuant to this Section 10.1(d) if Seller is then in material breach of any of its 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 10.1(b)(ii) shall be deemed to be a termination by Seller pursuant to this Section 10.1(d) if Seller is entitled to terminate this Agreement pursuant to this Section 10.1(d) at the time of such purported termination.

(e) by written notice from Buyer if the Bid Protections Order has not been entered by the Bankruptcy Court within fourteen (14) days of the Execution Date.

(f) by written notice from either Seller or Buyer, if Seller consummates an Alternative Transaction.

Each condition set forth in this Section 10.1 shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in this Section 10.1 are applicable, the applicable Party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated.

10.2 **Effect of Termination.**

(a) In the event of termination of this Agreement by Buyer or Seller pursuant to this Article 10, 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 (other than as set forth in Section 10.2(b) below); provided, that the provisions of Sections 7.1(c) (Access and Reports; Confidentiality), 11.9 (Expenses), 11.10 (Governing Law, Consent to Jurisdiction and Venue; Jury Trial Waiver), 11.15 (No Liability) and this Section 10.2 (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 Seller terminates (or is deemed to terminate) this Agreement pursuant to Section 10.1(d), Seller shall keep the Good Faith Deposit provided by Buyer pursuant to the Bidding Procedures.

(b) In the event this Agreement is terminated by Buyer or Seller pursuant to Section 10.1(f), Buyer shall be entitled to payment from Seller of (i) the Breakup Fee plus (ii) the Expense Reimbursement (collectively, the "Bid Protections"), within five (5) Business Days following the consummation of the Alternative Transaction referred to in Section 10.1(f). The Parties acknowledge and agree that if this Agreement is terminated pursuant to Section 10.1(f), the actual damages incurred by Buyer will be difficult, if not impossible, to ascertain and, accordingly, the Parties have provided for the liquidated damages provided pursuant to the Bid Protections. The Bid Protections shall not be construed as a penalty, but as a bona fide attempt to establish an agreed upon measure of damages which Buyer will suffer as a result of such termination of this Agreement. The Bid Protections payable hereunder shall constitute administrative priority expenses under Sections 503(b) and 507(a)(1) of the Bankruptcy Code.

ARTICLE 11

GENERAL PROVISIONS

11.1 **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.

11.2 **Confidentiality**. Following the Closing, 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) is or becomes available to the public, (b) is or may be necessary to wind down any of Seller’s estates, or in connection with the enforcement of the rights of, or the defense of any Proceeding against or involving, Seller, provided that the Confidential Information is afforded confidential treatment, (c) relates solely to any Excluded Assets and/or Excluded Liabilities, or (d) is or may be necessary in connection with the Bankruptcy Case provided that the Confidential Information is afforded confidential treatment. Notwithstanding the foregoing, Seller may disclose Confidential Information if 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 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, Seller or its Representative shall provide Buyer with prompt notice, to the extent allowed by law, rule and regulation, of such requirement before making such disclosure and will provide reasonable cooperation with Buyer, at Buyer’s expense, in Buyer’s attempts to protect against or limit the scope of such disclosure. Seller agrees to disclose only that portion of the Confidential Information which it has been advised by counsel it is required to disclose, and Seller shall use its best efforts to obtain confidential treatment of such Confidential Information.

11.3 **Public Announcements**. From the Execution Date to the Closing, unless otherwise required by applicable Legal Requirement or by obligations of Buyer or Seller or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, Buyer, on the one hand, and Seller, 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 Seller 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.

11.4 **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, facsimile transmission or email transmission (receipt confirmed):

(a) If to Seller, then to:

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

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
Email: swilliams@paulweiss.com
emccolm@paulweiss.com

(b) If to Buyer:

MFR II, LLC
1654 King Street
Enfield, CT 06082
Attn: William J. Firestone
Facsimile: (860) 623-9160
Email: wfirestone@crgauction.com

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

Vedder Price P.C.
222 N. LaSalle Street, Suite 2600
Chicago, IL 60601
Attn: Michael M. Eidelman
Facsimile: (312) 609-5005
Email: meidelman@vedderprice.com

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.

11.5 **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.

11.6 **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 Seller, 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 Seller, on the other hand, with respect to their subject matter. This Agreement may not be amended, modified or supplemented except by a written agreement executed by each of the Parties.

11.7 **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 11.7 shall be null and void *ab initio*; provided, however, that Buyer may transfer or assign its rights and obligations under this Agreement to one or more of its Affiliates, provided that no such transfer or assignment will relieve Buyer of its obligations hereunder.

11.8 **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.

11.9 **Expenses.** Except as otherwise expressly provided in this Agreement, 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.

11.10 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 11.4) 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 SELLER, BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

11.11 **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 11.4, 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.

11.12 **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.

11.13 **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 Seller 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.

11.14 **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 11.14, 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 11.14 shall be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

11.15 **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 Seller 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 be brought only 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.

MFR II, LLC

By: 

Name: DAVID A. MUSLIM

Title: MEMBER

NORANDA ALUMINUM, INC.

By: _____

Name:

Title:

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.

MFR II, LLC

By: _____
Name:
Title:

NORANDA ALUMINUM, INC.

By: 
Name: *Gail E. Lehman*
Title: *General Counsel*