

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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APEX SILVER MINES LTD

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

FORM 8-K

Current Report

**Pursuant to Section 13 or 15(D) of
the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **January 20, 2009**

APEX SILVER MINES LIMITED

(Exact name of registrant as specified in its charter)

**Cayman Islands, British
West Indies**
(State or other jurisdiction of
incorporation or organization)

1-13627
(Commission
File Number)

98-0514342
(I.R.S. Employer
Identification Number)

**Walker House
Mary Street
George Town, Grand Cayman
Cayman Islands, British West Indies**
(Address of principal executive offices)

Not Applicable
(Zip Code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into Material Definitive Agreement.

On January 20, 2009, Apex Silver Mines Limited (the “Company”) and Sumitomo Corporation (“Sumitomo”) executed a Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement (the “DIP Financing Facility”) under which Sumitomo has agreed to finance the Company’ s pro rata portion of operating costs for the San Cristobal mine, up to \$35.0 million. The material terms of the DIP Financing Facility are consistent with the description provided in the Company’ s Current Report on Form 8-K filed on January 13, 2009.

The DIP Financing Facility will bear interest at 15% per annum and is secured by substantially all of the Company’ s assets. Sumitomo has agreed not to exercise its remedies as lender under the San Cristobal project finance facility or the MSC Loan Agreement dated August 11, 2008, as amended, until maturity of the DIP Financing Facility. The DIP Financing Facility will mature on the earliest to occur of: (i) March 31, 2009, (ii) the acceleration of the DIP Financing Facility upon the occurrence of an Event of Default, as defined in the DIP Financing Facility, (iii) February 11, 2009, if the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has not entered a final order approving the DIP Financing Facility, (iv) the entry of an order from the Bankruptcy Court approving a plan of reorganization that is consistent with the Plan Support Agreement dated January 12, 2009 under which Sumitomo or its affiliates consummate the purchase of the San Cristobal mine under the Purchase and Sale Agreement dated January 12, 2009 (the “Purchase Agreement”), or (v) the entry of Apex or its affiliates into definitive documentation for an alternative transaction. Upon consummation of the transaction under the Purchase Agreement, Sumitomo has agreed to waive repayment of the DIP Financing Facility. Upon consummation of an alternative transaction, the Company has agreed to repay the obligations under the DIP Financing Facility in full as well as Sumitomo’ s \$131.625 million claim as a lender to the San Cristobal mine. On January 16, 2009, the Bankruptcy Court entered an order approving the DIP Financing Facility on an interim basis, permitting borrowings of up to \$15 million. A hearing to consider final approval of the DIP Financing Facility is set for January 29, 2009.

The DIP Financing Facility is attached hereto as Exhibit 10.1 and incorporated herein by reference.

On January 12, 2009, the Company and Sumitomo entered into a Purchase and Sale Agreement pursuant to which Sumitomo has agreed to purchase all of the Company’ s direct and indirect interests in the San Cristobal mine. The Company’ s Current Report on Form 8-K filed on January 13, 2009 included a description of the terms of the Purchase Agreement. The Purchase Agreement is attached hereto as Exhibit 10.2 and incorporated herein by reference.

Item 2.03 Creation of a direct financial obligation or an obligation under an Off-Balance Sheet Arrangement of the Registrant

The matters described in Item 1.01 of this Form 8-K with respect to the DIP Financing Facility are incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
10.1	Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement dated January 20, 2009, by and between Apex Silver Mines Limited and Sumitomo Corporation.
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10.2	Purchase and Sale Agreement date January 12, 2009 by and among Apex Silver Mines Limited, Apex Luxembourg S.A.R.L., Apex Silver Mines Sweden AB, Apex Silver Mines Corporation, ASC Bolivia LDC (Sucursal Bolivia), Sumitomo Corporation and SC Minerals Aktiebolag.
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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: January 26, 2009

Apex Silver Mines Limited

By: /s/ Gerald J. Malys
Name: Gerald J. Malys
Title: Senior Vice President and Chief
Financial Officer

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Exhibit No.	Description
10.1	Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement dated January 20, 2009, by and between Apex Silver Mines Limited and Sumitomo Corporation.

Purchase and Sale Agreement date January 12, 2009 by and among Apex Silver Mines Limited, Apex Luxembourg S.A.R.L., Apex Silver Mines Sweden AB, Apex Silver Mines Corporation, ASC Bolivia LDC (Sucursal Bolivia), Sumitomo Corporation and SC Minerals Aktiebolag.

SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION

CREDIT AND SECURITY AGREEMENT

Dated as of January 20, 2009

between

Apex Silver Mines Limited

and

Sumitomo Corporation

as Lender

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This SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (this “Agreement”), dated as of January 20, 2009 between Apex Silver Mines Limited (“Apex” or “Borrower”), a corporation organized and existing under the laws of the Cayman Islands, and Sumitomo Corporation, a corporation organized and existing under the laws of Japan (the “Lender”).

RECITALS

WHEREAS, on January 12, 2009 (the “Petition Date”), Borrower commenced a voluntary proceeding under Case No. 09-10182 (JMP) (the “Chapter 11 Case”), by filing a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101 et seq. (the “Bankruptcy Code”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). Borrower continues to operate its business as Debtor-in-Possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Borrower and Lender indirectly own all of the issued and outstanding Stock or other equity interests of Minera San Cristóbal, S.A. (“MSC”), a sociedad anónima organized under the laws of Bolivia engaged in the business of metals mining;

WHEREAS, Borrower and Lender indirectly own all of the issued and outstanding Stock or other equity interests of Apex Metals Marketing GmbH, a *Gesellschaft mit beschränkter Haftung* organized under the laws of Switzerland (“AMM”);

WHEREAS, Borrower directly owns all of the issued and outstanding Stock or other equity interests of Apex Luxembourg S.À. R.L., a *société à responsabilité limitée* organized under the laws of the Grand Duchy of Luxembourg (“Apex Luxembourg”);

WHEREAS, Borrower indirectly owns all of the issued and outstanding Stock or other equity interests of Apex Silver Mines Sweden AB, a *privat aktiebolag* organized under the laws of the Kingdom of Sweden (“Apex Sweden”);

WHEREAS, Apex Sweden, Apex Luxembourg, SC Minerals Aktiebolag (“SC Minerals”) and MSC are parties to that certain MSC Shareholders Agreement dated as of September 25, 2006 (the “MSC Shareholders Agreement”);

WHEREAS, Borrower, Lender, Apex Luxembourg, Apex Sweden, Apex Silver Mines Corporation, ASC Bolivia LDC, Surcursal Bolivia, and SC Minerals are parties to that certain Purchase and Sale Agreement, dated as of January 12, 2009 (the “Purchase Agreement”), pursuant to the terms of which Lender and its Affiliates have agreed to purchase all of Borrower’s indirectly owned Stock and other equity interests in MSC, AMM and the other assets identified in the Purchase Agreement (collectively, the “Purchased Properties”) subject to the terms and conditions set forth in the Purchase Agreement and Bankruptcy Court approval;

WHEREAS, Borrower has guaranteed the performance of Borrower's Affiliates' obligations under the Purchase Agreement;

WHEREAS, Borrower, Lender, the Supporting Senior Lenders (as identified therein), and certain Supporting Subordinated Noteholders (as identified therein) are parties to that certain

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Plan Support Agreement and accompanying Plan Term Sheet, dated as of January 12, 2009 (the "Plan Support Agreement");

WHEREAS, Borrower has agreed to commence, and seek prompt confirmation of, a pre-arranged Chapter 11 plan of reorganization upon the terms and subject to the conditions of the Plan Support Agreement;

WHEREAS, prior to the Petition Date, Borrower, from time to time, funded its pro rata share of MSC's working capital requirements through intercompany loans to Apex Luxembourg and Apex Sweden, such intercompany loans ultimately constituting Shareholder Loans (as such term is defined in the MSC Shareholders Agreement) from Apex Sweden to MSC;

WHEREAS, Borrower has requested that Lender provide a senior secured, super-priority loan facility to Borrower of Thirty-Five Million Dollars (U.S.\$35,000,000) (the "Commitment") to be used solely to fund MSC Shareholder Funding Requests;

WHEREAS, Lender is willing to make certain Post-Petition extensions of credit to Borrower of up to such an amount upon the terms and conditions set forth herein;

WHEREAS, Borrower acknowledges that the funding to be provided hereunder is necessary to preserve the value of Borrower's indirect interest in MSC and the other Purchased Properties to be acquired by Sumitomo and its Affiliates under the Purchase Agreement;

WHEREAS, Borrower acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to Borrower as provided in this Agreement;

WHEREAS, Borrower has agreed to secure all of its Obligations under the Loan Documents by granting to Lender a first priority security interest in and Lien upon substantially all of Borrower's assets; and

WHEREAS, Lender's willingness to extend financial accommodations to Borrower is done solely as an accommodation to Borrower and at Borrower's request and in furtherance of Borrower's enterprise.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

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1. DEFINITIONS; RULES OF INTERPRETATION. Capitalized terms used in this Agreement and not otherwise defined, including terms in the Recitals hereto, shall have the meanings ascribed to them in Annex A and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Annex A shall govern. All Annexes, Disclosure Schedules, Exhibits and other attachments (collectively, "Appendices") hereto, or expressly identified to this Agreement, are incorporated herein by reference, and taken together with this Agreement, shall constitute but a single agreement.

2. AMOUNT AND TERMS OF THE CREDIT FACILITY.

2.1 The Loan.

(a) Advances.

(i) Upon terms and subject to the conditions hereof, including the provisions of Section 4 below, the Loan shall be available for disbursement to Borrower in one or more advances (collectively, the “Advances”). The Loan may not exceed the Commitment. The Commitment shall terminate on the Commitment Termination Date. Except as otherwise set forth in Section 2.10, the entire unpaid balance of the Loan and all other non-contingent Obligations shall be immediately due and payable in full in immediately available funds on the Commitment Termination Date.

(ii) The date the initial Advance is made to Borrower is herein referred to as the “Initial Disbursement Date” and each date a subsequent Advance is made to Borrower is herein referred to as a “Subsequent Disbursement Date.”

(iii) When Borrower desires an Advance hereunder, it shall deliver to Lender a disbursement request in the form attached as Exhibit B (a “Disbursement Request”) specifying the amount of the Advance requested to be disbursed on the Initial Disbursement Date or Subsequent Disbursement Date, as applicable (which shall be no less than five (5) Business Days following the date on which the Disbursement Request is received by Lender, unless otherwise agreed by Lender); certifying the purpose for which the proceeds of such Advance will be used, referencing the MSC Projected Cash Forecast and the line item of the MSC Projected Cash Forecast to which such Advance relates and attaching a copy of the written request of MSC’ s board of directors for funding from its Stockholders (the “MSC Shareholder Funding Request”) that are to be partly funded with the proceeds of such Advance.

(iv) All Advances shall be made on Borrower’ s behalf to an MSC account designated by Borrower.

(v) Reliance on Notices. Lender shall be entitled to rely upon, and shall be fully protected in relying upon, any Disbursement Request or similar notice believed by Lender to be genuine, absent manifest error. Lender may assume that each Person executing and delivering any notice in accordance herewith was duly authorized, unless the responsible individual acting thereon for Lender has actual knowledge to the contrary.

2.2 Reserved.

2.3 Payments.

(a) Payments. Borrower shall make each payment under this Agreement, unconditionally in full without set-off, withholding or counterclaim, and except as provided in Section 2.3(b), free and clear of, and without reduction for or on account of, any present and future taxes or withholdings, or any liabilities with respect thereto. Each payment shall be made not later than 2:00 p.m. (New York time) on the day when due to Lender in Dollars and in immediately available funds, or such other funds as shall be separately agreed upon by Borrower and Lender, in accordance with Lender’ s payment instructions. For purposes of computing interest, all payments shall be deemed received on the Business Day on which immediately available funds thereof are received in the Interest Payment Account prior to 2:00 p.m. (New York time). Payments received after 2:00 p.m. (New York time) on any Business Day or on a day that is not a Business Day shall be deemed to have been received on the following Business Day.

(b) Tax Deductions. Any and all payments by Borrower under this Agreement shall be made without deduction or withholding for or on account of any tax, levy, impost, duty or other charge, fee, deduction or withholding of a similar nature (including any penalty or interest payable in connection with the failure to pay, or delay in paying, any of these) imposed by the Cayman Islands or any political subdivision or taxing authority thereof or therein or any other jurisdiction from or through which Borrower makes payment hereunder (a “Tax Deduction”) unless a Tax Deduction is required by law. If a Tax Deduction is required by law to be made by Borrower, the payment due from Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required. Borrower shall make any Tax Deduction under this Section 2.3(b), and any payment required in connection with that Tax Deduction, within the time allowed and for the minimum amount required by law; and shall within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, deliver to Lender evidence reasonably satisfactory to Lender that the Tax Deduction has been made or any appropriate payment paid to the relevant Governmental Authority (as applicable).

(c) Extension. Whenever any payment hereunder shall be stated to be due, or whenever any Interest Payment Date or any other date specified hereunder would otherwise occur, on a day other than a Business Day, then, except as otherwise provided herein, such payment shall be made, and such Interest Payment Date or other date shall occur, on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest hereunder.

(d) Application and Allocation of Payments.

(i) All payments by Borrower made under this Agreement whether consisting of proceeds of Collateral or otherwise and received prior to the occurrence and continuance of an Event of Default shall be applied to the Obligations as designated by Borrower. Any amounts so paid shall not be available for re-borrowing.

(ii) All payments by Borrower made under this Agreement whether consisting of proceeds of Collateral or otherwise and received when an Event of Default has

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occurred and is continuing or following the Commitment Termination Date shall be applied to amounts in the following order: (1) to Fees and Lender's expenses reimbursable hereunder; (2) to interest on the Loan, ratably in proportion to the interest accrued as to the Loan; (3) to principal payments on the Loan; (4) to all other Obligations, including expenses of Lender to the extent reimbursable under Section 2.7; and (5) to Borrower, its successors and assigns, or as a court of competent jurisdiction may direct.

(iii) After an Event of Default, Lender is authorized to, and at its sole election may, charge to the Loan balance on behalf of Borrower and cause to be paid all Fees, expenses, Charges, costs, interest and principal (other than principal of the Loan) owing by Borrower under this Agreement or any of the other Loan Documents if and to the extent Borrower fails to pay promptly any such amounts as and when due.

2.4 Right of Set-Off. Upon the occurrence and during the continuance of any Event of Default, Lender hereby is authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower), to set off and apply any obligations or indebtedness at any time owing by Lender to Borrower against any amounts owed to it by Borrower under this Agreement now or hereafter existing, irrespective of whether or not Lender shall have made any demand under this Agreement and although such Advances may be unmatured. Lender agrees to promptly notify Borrower after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application and shall not create any liability of Lender. The rights of Lender under this Section 2.4 are in addition to other rights and remedies (including other rights of set-off) which Lender may have.

2.5 Use of Proceeds.

(a) Advances made shall be used solely to fund MSC Shareholder Funding Requests and for no other purpose.

(b) Borrower shall apply, and shall cause each of Apex Luxembourg, Apex Sweden and MSC to apply, the proceeds of each Advance as follows: (A) all such proceeds credited or deemed credited to Borrower shall be used to fund an intercompany loan to Apex Luxembourg in the amount thereof, and such proceeds shall thereupon be deemed credited to Apex Luxembourg; (B) all such proceeds credited or deemed credited to Apex Luxembourg shall be used to fund an intercompany loan to Apex Sweden in the amount of such proceeds, and such proceeds shall thereupon be deemed credited to Apex Sweden; (C) all such proceeds credited or deemed credited to Apex Sweden shall be used to fund Apex Sweden's pro-rata share of the MSC Shareholder Funding Request requested by MSC, and such proceeds shall thereupon be deemed credited to MSC and shall constitute a Shareholder Loan; and (D) all such proceeds credited or deemed credited to MSC shall be used solely for working capital purposes in respect of line items set forth in the MSC Projected Cash Forecast.

(c) Absent Lender's written consent, Borrower, Apex Luxembourg, Apex Sweden and MSC shall not be permitted to use the proceeds of any Advance for any other purpose whatsoever.

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2.6 Interest Rate.

(a) The outstanding principal amount of each Advance shall accrue interest at a rate per annum equal to fifteen percent (15%). Interest shall be calculated on the basis of a 360-day year and the actual number of days elapsed.

(b) So long as an Event of Default has occurred and is continuing, the Advance shall accrue interest on any unpaid principal from the date such Event of Default occurred until the date the Event of Default ceased to continue, without the need of demand, at a rate per annum equal at all times to six percent (6%) per annum in addition to the Interest Rate, which shall continue to accrue (the “Default Rate”). Payment of any such interest at the rate described in the preceding sentence shall not constitute a waiver of any Event of Default and shall be without prejudice to the right of Lender to exercise any of its rights and remedies under this Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, the total liability of Borrower for the payment of interest under this Agreement shall not exceed the applicable limit imposed by the usury laws of any applicable jurisdiction. If Lender receives interest in an amount which exceeds such limit, such excess amount shall be applied instead to the reduction of the unpaid principal balance and not to the payment of interest, or at Lender’s election the surplus shall be remitted to Borrower by Lender, and Borrower hereby agrees to accept such remittance.

2.7 Indemnity. Borrower shall indemnify and hold harmless Lender and its Affiliates, and each such Person’s respective officers, directors, employees, attorneys, agents and representatives (each, an “Indemnified Person”), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and expenses (including reasonable attorneys’ fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as a result of the Obligations and credit having been extended, suspended or terminated under this Agreement and the other Loan Documents and the administration of such credit, and any actions or failures to act in connection therewith, including any and all documented legal costs and expenses arising out of or incurred in connection with disputes between or among any parties to any of the Loan Documents relating to the foregoing (collectively, “Indemnified Liabilities”); provided that Borrower shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense arises from that Indemnified Person’s gross negligence, willful misconduct or breach of this Agreement, the Interim Order or the Final Order. No Indemnified Person shall be responsible or liable to any other party to the Loan Document (or any successor, assignee or third-party beneficiary of such Person or any other Person asserting claims derivatively through such party) for indirect, punitive, exemplary or consequential damages which may be alleged as a result of the Obligations and credit having been extended, suspended or terminated under any Loan Document or as a result of any other transaction contemplated hereunder or thereunder.

2.8 Single Loan. The Loan to Borrower and all of the other Obligations of Borrower arising under this Agreement and the other Loan Documents shall constitute one general obligation of Borrower secured, until the Satisfaction Date, by all of the Collateral.

2.9 Super-Priority Nature of Obligations and Lender’s Liens.

(a) The priority of Lender’s Liens on the Collateral shall be set forth in the Interim Order and the Final Order.

(b) All Obligations shall constitute administrative expenses of Borrower in the Chapter 11 Case, with administrative priority and senior secured status under Sections 364(c) and 364(d) of the Bankruptcy Code. Subject to the Carve-Out Amount, such administrative claim shall have priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise as set forth in the Interim Order and the Final Order, and shall at all times be senior to the rights of Borrower, Borrower’s estate, and any successor trustee or estate representative in the Chapter 11 Case or any subsequent proceeding or case under the Bankruptcy Code. The Liens granted to Lender on the Collateral, and the priorities accorded to the Obligations, shall have the priority and senior secured status afforded by Sections 364(c) and 364(d)(1) of the Bankruptcy Code (all as more fully set forth in the Interim Order and Final Order) senior to all claims and interests other than the Carve-Out Expenses up to the Carve-Out Amount. The priorities accorded to the Obligations shall have the priority and senior secured status afforded by Sections 364(c) and 364(d)(1) of the Bankruptcy Code (all as more fully set forth in the Interim Order and the Final Order) senior to all claims and interests other than the Carve-Out Expenses up to the Carve-Out Amount.

(c) Lender’s Liens on the Collateral and Lender’s administrative claims under Sections 364(c)(1) and 364(d) of the Bankruptcy Code afforded the Obligations shall also have priority over any claims arising under Section 506(c) of the Bankruptcy Code, provided that Lender’s Lien on the Collateral owned by Borrower shall be subject and subordinate to the following (hereafter referred to as the “Carve-Out Expenses”): (i) the payment of any unpaid fees payable pursuant to 28 U.S.C. § 1930 (including fees under 28 U.S.C. § 1930(a)(6)) and interest, if any, (ii) the fees due to the Clerk of the Court, (iii) the actual fees and expenses incurred by professionals, for the period prior to the occurrence of an Event of Default (less the unused portion of retainers held by such professionals), retained by an order of the Court entered pursuant to Sections 327, 328 or 1103 of the Bankruptcy Code (the “Case Professionals”), provided they are within the amounts set forth in the Apex Budget or permitted by Section 5.12 and are subsequently allowed by the Bankruptcy Court under Sections 330 and 331 of the Bankruptcy Code; (iv) the payment of, following the occurrence of any Event of Default, after which Lender elects not to continue to provide Borrower with the Loan, or otherwise terminates the Loan, allowed professional fees and disbursements incurred after

such Event of Default or termination by all Case Professionals in an aggregate amount not to exceed \$2,000,000 and an additional amount not to exceed \$20,000 for reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code, if applicable (the “Carve-Out Amount”). No portion of the Carve-Out Amount, any other proceeds of the Loan, the Collateral or any proceeds thereof, may be used to litigate, object, contest or challenge in any manner or raise any defenses to the debt or collateral position of (x) Lender under this Agreement or any other claims related to this Agreement against Lender or any of the entities owned or controlled by Lender or its Affiliates or (y) DIP Lender in its capacity as the holder of the Sumitomo Secured Lender Claim, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under this Agreement or the Sumitomo Secured Lender Claim, the validity,

perfection or priority of any mortgage, security interest or Lien with respect thereto or any other rights or interests or replacement Liens with respect thereto or any other rights, claims or interests of Lender (as Lender or as the holder of the Sumitomo Secured Lender Claim), or by seeking to subordinate or re-characterize the Loan, the Sumitomo Secured Lender Claim or disallow any claim, mortgage, security interest or, Lien by asserting any claims or causes of action, including any actions under Chapter 5 of the Bankruptcy Code, against Lender or its Affiliates (including in its capacity as holder of the Sumitomo Secured Lender Claim), or any of their officers, directors, agents or employees. In addition, the Carve-Out Amount, any other proceeds of the Loan, any Collateral and the proceeds thereof, and the Cash Collateral shall not be used in connection with (1) preventing, hindering or delaying Lender’s enforcement or realization upon the Collateral or the collateral pledged as security for the Sumitomo Secured Lender Claim once an Event of Default has occurred herewith or an event of default under the Financing Documents (as such term is defined in the Common Security Agreement), (2) selling or otherwise disposing of the Collateral without the consent of Lender, or (3) incurring indebtedness senior to Lender’s Liens hereunder other than as permitted in this Agreement. Notwithstanding anything to the contrary in this [Section 2.9\(c\)](#), the Borrower shall be entitled to use up to US\$250,000 of the Carve-Out Amount to pursue any rights or remedies, or take any actions in respect to such rights or remedies, under the Purchase Agreement provided Borrower is not in contravention of this [Section 2.9\(c\)](#). Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Chapter 11 Case under any chapter of the Bankruptcy Code, and nothing herein shall be construed to obligate Lender in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that Borrower have sufficient funds to pay such compensation or reimbursement.

2.10 Payment of Obligations. Upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, Lender shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court; provided, however, (i) if the Commitment Termination Date occurs as a consequence of the occurrence of the effective date of a plan of reorganization consented to by Lender under which Lender (or one of its affiliates) consummates the purchase of the Purchased Properties in accordance with the Purchase Agreement, Lender shall waive and release payment of all Advances outstanding at that time, all interest accrued thereon and all Fees and Charges due and owing Lender at that time and (ii) if the Commitment Termination Date occurs as a consequence of Borrower’s consummation of an Alternative Transaction in accordance with the terms and conditions of the Purchase Agreement, Borrower shall satisfy in full, in immediately available funds, the Obligations, the Sumitomo Secured Lender Claim, the Break-Up Fee and the Reimbursement Amount, within two (2) Business Days following the consummation of such Alternative Transaction. Borrower agrees to waive any and all claims against Apex Luxembourg, and shall cause Apex Luxembourg to waive any and all claims Apex Luxembourg may have against Apex Sweden, for repayment of principal, accrued interest and any other related obligations outstanding on the intercompany loans made pursuant to [Section 2.5](#), in the event Lender waives the payment of all Advances, accrued interest, Fees and Charges as described in this [Section 2.10](#). Borrower and Lender expressly acknowledge and agree that the waiver and release by Lender described in this [Section 2.10](#) shall not extend to any Shareholder Loans made with the proceeds of any Advance (such Shareholder Loans shall be included among the Purchased Properties).

2.11 No Discharge; Survival of Claims. Borrower agrees that except as otherwise expressly agreed to by Lender (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization in the Chapter 11 Case (and Borrower pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the super-priority administrative claim granted to Lender pursuant to the Interim Order and Final Order and described in [Section 2.9\(b\)](#) and the Liens granted to Lender pursuant to the Final Order and described in [Section 2.9\(c\)](#) shall not be affected in any manner by the entry of an order confirming a plan of reorganization in the Chapter 11 Case.

2.12 Release. Borrower hereby acknowledges effective upon entry of the Final Order, that it has no defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of

Borrower's liability to repay Lender as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from Lender (solely in its capacity as Lender under this Agreement). Borrower, on behalf of its bankruptcy estate, and on behalf of its successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, hereby fully, finally and forever Releases and discharges Lender and all of Lender's past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, Subsidiaries, and each Person acting for or on behalf of any of them (collectively, the "Released Parties") of and from any and all past or present actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, against any of the Released Parties, whether held in a Personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Interim Order and the Final Order; provided, however, that nothing herein shall constitute a release of any actions, causes of action, demands, suits, claims, lawsuits, losses or other obligations of any kind or nature whatsoever, whether in law, equity or otherwise, arising out of, connected with or relating to the Purchase Agreement, the Management Services Agreement (as defined in the Purchase Agreement), the Plan Support Agreement or the Sumitomo Secured Lender Claim and the Financing Documents (as defined in the Common Security Agreement). Borrower expressly acknowledges that the release provided for hereunder is in addition to, and shall not limit in any manner, the releases provided to Lender and Lender's Affiliates, including, but not limited to, the releases contemplated by the Plan Support Agreement, under and in accordance with any plan of reorganization confirmed in the Chapter 11 Case and the Purchase Agreement.

2.13 Waiver of Any Priming Rights. Upon the Closing Date, and for itself and on behalf of its estate, and for so long as any Obligations shall be outstanding, Borrower hereby irrevocably waives any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations.

2.14 Reserved.

3. COLLATERAL

3.1 Security. As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations and to induce Lender to make the Loan available to Borrower in accordance with the terms hereof, Borrower hereby assigns, creates, grants, conveys, mortgages, pledges, hypothecates and transfers to Lender for Lender's benefit, first priority Liens (subject to the Carve-Out Amount and the cash collateral (in an amount not to exceed \$550,000) in account number 605039224 maintained by HSBC USA National Association and pledged by Borrower to secure payment of that certain letter of credit (and reasonable fees, costs and expenses of issuer) issued in the amount of \$500,000 issued by HSBC Bank USA National Association in favor of HSBC Chile and corresponding Boleta de Garantia to Antofagasta Railway Company PLC, dated as of June 25, 2008 and expiring on May 20, 2009, and with the priority established by the Interim Order and Final Order), in accordance with Sections 364(c) and (d) of the Bankruptcy Code in all right, title and interest of Borrower in and to (a) any and all Property, assets and things of value of every kind or type, tangible, intangible, real, personal and fixed, whether now owned or hereafter acquired and wherever located, including Real Estate (including all leasehold interests, mineral Leases, and mineral and water rights), the Cash Collateral Accounts and all other deposit accounts (and all deposits contained therein), accounts, chattel paper (including electronic chattel paper), Instruments, documents (including electronic documents of title), all of Borrower's rights and claims relating to all deposits and reserves held by utilities and trade creditors, inventory, equipment, general intangibles (including payment intangibles, intellectual property, interests in partnerships and joint ventures (to the extent not prohibited, in which case Lender shall have a Lien on the proceeds of such interests)), tax refunds, letter of credit rights, supporting obligations, commercial tort claims, and investment property, all pursuant to Section 364(c) and (d) of the Bankruptcy Code and, to the extent not otherwise included, (b) all proceeds of each of the foregoing, and (c) all accessions to, substitutions and replacements (including any Property repaired, rebuilt or replaced with casualty insurance proceeds and condemnation awards) for, and insurance and condemnation proceeds, rents, profits and products of each of the foregoing (all of the foregoing, the "Collateral").

3.2 Perfection of Security Interests.

(a) At the reasonable request of Lender and at Borrower's expense, Borrower shall (i) execute and deliver to Lender documentation satisfactory to Lender evidencing the first priority Liens granted hereby, providing for the perfection of such Liens and evidencing that the automatic stay provisions of Section 362 of the Bankruptcy Code have been modified to permit the execution, delivery and filing of such documentation, and (ii) perform or take any and all steps at any time necessary to perfect, maintain, protect and enforce

Lender's Lien on the Collateral; provided, however, that no such documentation shall be required as a condition to the validity, priority or perfection of any of the Liens created pursuant to this Agreement which first priority security interests and Liens shall be deemed valid and properly perfected upon approval by the Bankruptcy Court of the Interim Order; provided further that no such documentation shall be filed in any jurisdiction with a mortgage, stamp, intangibles or similar tax.

(b) Until all Obligations have been satisfied and paid in full in cash by the Borrower and the Commitment shall have terminated, Lender's first priority security interest in the Collateral as security for such obligations shall continue in full force and effect.

(c) Notwithstanding the provisions of Section 3.2(a) hereof, or failure on the part of Borrower or Lender to perfect, maintain, protect or enforce Lender's Lien on the Collateral, the Interim Order or the Final Order, as the case may be, shall automatically, and without further action by any Person, perfect Lender's Lien against the Collateral.

3.3 Cash Collateral Account. All Cash Collateral shall be deposited by Borrower into the accounts identified on Disclosure Schedule 3.3 subject to Lender's first priority perfected Lien (collectively, the "Cash Collateral Accounts"). Such funds shall be held in the Cash Collateral Accounts until such time as the amounts held therein are applied by Borrower to pay normal operating expenses consistent with the Apex Budget (or permitted by Section 5.12), the Interim Order and any Final Order. So long as no Event of Default shall have occurred and be continuing, amounts held in the Cash Collateral Accounts shall be made available to Borrower to pay normal operating expenses consistent with the Apex Budget (or permitted by Section 5.12). During the existence of an Event of Default, Lender may apply all amounts held in the Cash Collateral Accounts as required by the second paragraph of Section 2.3(d). Borrower agrees to use its commercially reasonable efforts to execute and deliver appropriate Control Agreements in respect of the Cash Collateral Accounts on or prior to the fifth Business Day after the effectiveness of the Interim Order or such later time as Lender may agree in its sole discretion. Lender agrees not to give any direction to the depository banks in respect of the Cash Collateral Accounts except during the existence of an Event of Default. Lender agrees to terminate the Control Agreements upon the Satisfaction Date. Borrower shall deliver to Lender on Monday of each week, or more frequently if requested by Lender, copies of account statements for each of the Cash Collateral Accounts.

3.4 Rights of Lender. Lender may at any time on or after the Commitment Termination Date until the Satisfaction Date, after three (3) Business Days' prior written notice to Borrower of its intention to do so, notify Account Debtors, parties to contracts with Borrower, obligors on Instruments of Borrower and obligors in respect of chattel paper of Borrower that the right, title and interest of Borrower in and under such accounts, such contracts, such Instruments and such chattel paper have been assigned to Lender and that payments shall be made directly to Lender. Upon the request of Lender on or after the Commitment Termination Date and prior to the Satisfaction Date, Borrower will so notify such Account Debtor, such parties to contracts, obligors on such Instruments and obligors in respect of such chattel paper. Upon the occurrence and during the continuation of a Default or an Event of Default, Lender may in its own name or in the name of others communicate with such parties to such accounts, such contracts, such Instruments and such chattel paper to verify with such Persons to Lender's satisfaction the existence, amount and terms of any such accounts, contracts, Instruments or chattel paper.

3.5 Preservation of Collateral. Lender shall not in any way be responsible for the payment of any costs incurred in connection with preserving or disposing of Collateral pursuant to Section 506(c) of the Bankruptcy Code, and the Collateral may not be charged for the incurrence of any such cost.

3.6 Lender's Appointment as Attorney-in-Fact.

(a) Borrower hereby irrevocably constitutes and appoints Lender and any officer of Lender, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Borrower and in the name of Borrower or in Lender's own name, from time to time in Lender's discretion, for the purpose of collecting the Obligations when due in accordance with the provisions of this Agreement, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary and desirable to accomplish such purpose, and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Borrower, without notice to or assent from them, to do the following:

(i) to ask, demand, collect, receive and give acquittances and receipts for any and all monies due and to become due under any Collateral and, in the name of Borrower or Lender's own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other Instruments for the payment of monies due under any Collateral and to file any

claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Lender for the purpose of collecting any and all monies due under any Collateral whenever payable and to file any claims or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Lender for the purpose of collecting any and all such monies due under any Collateral whenever payable;

(ii) to pay or discharge taxes, Liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or procure any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof, in each case which are not stayed pursuant to the Chapter 11 Case or which are not being contested in accordance with this Agreement; and

(iii) (A) to direct any party liable for any payment under any of the Collateral to make payment of any and all monies due, and to become due, and to become due thereunder, directly to Lender or as Lender shall direct; (B) to receive payment of and receipt for any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (C) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against Borrower, assignments, verifications and notices in connection with accounts and other documents constituting or relating to the Collateral; (D) to commence and prosecute any suits, actions or proceedings at law or equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action or proceeding brought against Borrower with respect to any Collateral; (F) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or Releases as Lender may deem appropriate; (G) to license or, to the extent permitted by an applicable license, sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any trademark, throughout the world for such term or terms, on such conditions, and in such manner, as Lender shall in its sole discretion determine is appropriate to liquidate the Collateral; and (H) generally to sell, transfer, pledge, make any agreement with respect to or

otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at the option of Lender and at Borrower's expense, at any time, or from time to time, all acts and things which Lender reasonably deems necessary to protect, preserve or realize upon the Collateral and Lender's Lien therein, in order to effect the intent of this Agreement, all as fully and effectively as Borrower might do.

(b) Lender agrees that it will forbear from exercising the power of attorney or any rights granted to it pursuant to this Section 3.6 until after the Commitment Termination Date and prior to the Satisfaction Date, or upon the occurrence and during the continuation of an Event of Default. Borrower hereby ratifies, to the extent permitted by Applicable Law, all that said attorneys shall lawfully do or cause to be done by virtue hereof. The power of attorney granted pursuant to this Section is a power coupled with an interest and shall be irrevocable until the Obligations are paid in full in cash and the Commitment has terminated.

(c) The powers conferred on Lender hereunder are solely to protect Lender's interests in the Collateral and shall not impose any duty upon Lender to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Borrower for any act or failure to act, except for its own gross negligence or willful misconduct.

(d) Borrower also authorizes Lender, at any time and from time to time on and after the Commitment Termination Date and prior to the Satisfaction Date, or upon the occurrence and during the continuation of an Event of Default, (i) to communicate, in the name of Borrower or in Lender's own name (at Lender's option), with any party to any contract with regard to the assignment of the right, title and interest of Borrower in and under the contracts hereunder and other matters relating thereto and (ii) to execute any endorsements, assignments or other Instruments or conveyance or transfer with respect to the Collateral.

4. CONDITIONS PRECEDENT

4.1 Conditions to the Initial Advance. Lender shall not be obligated to make the Loan on the Initial Disbursement Date or any Advance on any Subsequent Disbursement Date, until the following conditions have been satisfied or provided for in a manner satisfactory to Lender, or waived in writing by Lender:

(a) Credit Agreement; Loan Documents. This Agreement or counterparts hereof shall have been duly executed by Borrower and delivered to Lender; and Lender shall have received such other documents, instruments, and agreements as Lender shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including all those listed in the Closing Checklist attached hereto as Annex B, each in form and substance reasonably satisfactory to Lender.

(b) Purchase Agreement. The Purchase Agreement shall have been duly executed by Borrower and the other parties thereto (other than Lender), delivered to Borrower and Lender and the other parties thereto, and remain in full force and effect. All documentation

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related to the Purchase Agreement, including the Management Services Agreement, in form and substance acceptable to Lender, shall have been completed.

(c) Plan Support Agreement. The Plan Support Agreement shall have been executed by Borrower and the other parties thereto (other than Lender), delivered to Borrower and Lender and the other parties thereto, and remain in full force and effect.

(d) Approvals. Lender shall have received (i) satisfactory evidence that Borrower has obtained all required consents and approvals of all Persons including all requisite Governmental Authorities, in connection with the filing of the Chapter 11 Case and to the execution, delivery and performance of this Agreement and the other Loan Documents and the payment of all fees, costs and expenses associated with all of the foregoing and/or (ii) an officer's certificate in form and substance satisfactory to Lender affirming that no such consents or approvals are required.

(e) Bankruptcy Matters.

(i) Interim Order. Entry by the Bankruptcy Court of the Interim Order, by no later than five (5) Business Days following the Petition Date, in form and substance satisfactory to Lender, among other things, (x) approving the transactions contemplated hereby, (y) granting a perfected security interest in all Collateral subject only to the Carve-Out Amounts and granting the Obligations a super-priority administrative claim status, and (z) modifying the automatic stay to permit the creation and perfection of Lender's Liens and automatically vacating the automatic stay to permit enforcement of Lender's default-related rights and remedies under this Agreement, the other Loan Documents and Applicable Law;

(ii) Fee Approval and Support Motions. Borrower shall have filed the Fee Approval Motion and the Support Motion (as such terms are defined in the Purchase Agreement), each in form and substance reasonably satisfactory to the Lender, and in each case no later than three (3) days after the Petition Date; and

(iii) Plan of Reorganization. Borrower shall have filed a plan of reorganization no later than three (3) days of the Petition Date, which shall be in form and substance acceptable to Lender.

4.2 Further Conditions to the Loan. Except as otherwise expressly provided herein, Lender shall not be obligated to fund any Advance if, as of the date thereof:

(a) the Advance requested would cause the aggregate outstanding amount of the Loan to exceed the amount then authorized by the Interim Order or the Final Order, as the case may be, or any order modifying, reversing, staying or vacating such order shall have been entered, or any appeal of such order shall have been timely filed;

(b) any representation or warranty by Borrower contained herein or in any other Loan Document is untrue or incorrect in any material respect as of such date, except to the extent that such representation or warranty expressly relates to an earlier date and except for changes therein expressly permitted or expressly contemplated by this Agreement;

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- (c) any Default or Event of Default has occurred and is continuing or would result after giving effect to any Advance;
- (d) a Termination Event (as such term is defined in the Purchase Agreement) has occurred and is continuing; or
- (e) (i) the Bankruptcy Court shall not have entered the Final Order on or before the date that is 30 days after the Petition Date, (ii) the Bankruptcy Court shall not have entered the Final Order following the expiration of the Interim Order, (iii) the Interim Order or the Final Order, as the case may be, shall have been vacated, stayed, reversed, modified or amended without Lender's consent or shall otherwise not be in full force and effect, (iv) a motion for reconsideration of any such order shall have been timely filed or (v) an appeal of any such order shall have been timely filed and such order in any respect is the subject of a stay pending appeal.

The request for and acceptance by Borrower of the proceeds of any Advance shall be each deemed to constitute, as of the date thereof, (i) a representation and warranty by Borrower that the conditions in this Section 4.2 have been satisfied, and (ii) a reaffirmation by Borrower of the granting and continuance of Lender's Liens, pursuant to the Collateral Documents.

5. REPRESENTATIONS AND WARRANTIES

To induce Lender to make the Loan, Borrower makes the following representations and warranties to Lender. Each of the representations and warranties made herein are subject to the effect of the filing of the Chapter 11 Case.

5.1 Organization; Powers. Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

5.2 Authorization; Enforceability. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the transactions contemplated hereby and by the other Loan Documents to be entered into by Borrower are within Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, Stockholder action. This Agreement has been duly executed and delivered by Borrower and subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable) constitutes, and each other Loan Document to which Borrower is a party, when executed and delivered by Borrower will constitute, a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.3 Governmental Approvals; No Conflicts. Subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the transactions to be entered

into pursuant to the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for such as have been obtained or made and are in full force and effect and except filings and recordings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Applicable Law or the charter, bylaws or other organizational documents of Borrower, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon Borrower or its assets, or give rise to a right thereunder to require any payment to be made by Borrower, and (d) will not result in the creation or imposition of any Lien on any asset of Borrower, except Liens created under the Loan Documents.

5.4 Properties.

(a) Borrower has valid property interests in full force and effect with respect to all its real and Personal property material to its business, except for defects which would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower owns, or is licensed to use, all Intellectual Property material to its business, and the use thereof by Borrower does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.5 Legal Proceedings. Other than the Chapter 11 Case or as set forth in Schedule 5.5, there are no Legal Proceedings pending against or, to the knowledge of Borrower, threatened against or affecting Borrower (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve any of the Loan Documents.

5.6 Compliance with Applicable Laws and Agreements. Borrower is in compliance with all Applicable Law, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. All material contracts of Borrower are valid and in full force and effect, and are enforceable by Borrower in accordance with their terms. Borrower has not waived any of its material rights, defenses, setoffs or rights recoupment under any such contracts.

5.7 Taxes. Borrower has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings diligently conducted, for which Borrower has set aside on its books adequate reserves, or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

5.8 Disclosure. Borrower has disclosed to Lender all agreements, instruments and corporate or other restrictions to which Borrower and/or MSC is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of any of the reports, financial statements, certificates or other information furnished by or on behalf of Borrower to Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder

(as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect.

5.9 Collateral Documents. The Collateral Documents create in favor of Lender, a legal, valid and enforceable security interest in the Collateral and the Collateral Documents constitute the creation of a fully perfected first priority Lien on, and security interest, in, all right, title and interest of Borrower in all other Collateral, prior and superior in right to any other Person, other than in the case of the Carve-Out Expenses, and the holders of Permitted Encumbrances having priority over the Lien of Lender by operation of law or under a purchase money arrangement.

5.10 Reserved.

5.11 MSC Projected Cash Forecast.

(a) Borrower has prepared and delivered to Lender an initial thirteen (13) week MSC Projected Cash Forecast, annexed hereto as Exhibit A. The initial MSC Projected Cash Forecast has been thoroughly reviewed by Borrower and its management and sets forth for the periods covered thereby, among other things, MSC's projected weekly operating cash receipts and disbursements for each week commencing with the week ending January 16, 2009 (collectively, the "Projected Information"). In addition to the initial MSC Projected Cash Forecast, Borrower shall thereafter deliver to Lender an updated MSC Projected Cash Forecast on a weekly basis.

(b) Borrower hereby confirms, acknowledges and agrees that the failure to deliver the initial MSC Projected Cash Forecast or any updated MSC Projected Cash Forecast within the applicable grace period, in form and substance reasonably satisfactory to Lender, as provided in Section 5.11(a) hereof, shall constitute an Event of Default. Notwithstanding any approval by Lender of the initial MSC Projected Cash Forecast or any subsequent or amended MSC Projected Cash Forecast, Lender will not, and shall not be required to, provide any Advances to Borrower pursuant to the MSC Projected Cash Forecast, but shall only provide the Loan in accordance with the terms and conditions set forth in this Agreement, the Interim Order and the Final Order. Lender is relying upon Borrower's delivery of, and compliance with, the MSC Projected Cash Forecast in accordance with this Section 5.11 in determining to enter into the Post-Petition financing arrangements provided for herein.

5.12 Apex Budget.

(a) Borrower has prepared and delivered to Lender an initial thirteen (13) week Apex Budget, annexed hereto as Exhibit E. The initial Apex Budget has been thoroughly reviewed by Borrower and its management and sets forth for the periods covered thereby, among other things, Apex's projected weekly operating cash receipts and disbursements for each week commencing with the week

ending January 16, 2009. In addition to the initial Apex Budget, Borrower shall thereafter deliver to Lender updates to the Apex Budget on a weekly basis (the "Budget Report").

(b) The Budget Report shall show (i) the actual receipts and disbursements of the Borrower during the period from the initial Apex Budget or the preceding Budget Report; and (ii) a comparison of the actual receipts and disbursements for the Borrower to the receipts and disbursements shown in the Apex Budget both for the preceding reporting period and on a cumulative basis for the period from the Petition Date through the last day of the reporting period in each of the categories set forth in the Apex Budget.

(c) Borrower hereby confirms, acknowledges and agrees that (i) the failure to deliver any Apex Budget or any Budget Report within the applicable grace period, in form and substance reasonably satisfactory to Lender, as provided in this Section 5.12, or (ii) a variance from the aggregate amount of expenditures set forth in the Apex Budget that exceeds twenty percent (20%) on a cumulative basis from the Closing Date until the date of the most recently delivered Apex Budget or Budget Report, shall constitute an Event of Default. Notwithstanding any approval by Lender of the initial Apex Budget or any subsequent or amended Apex Budget, Lender will not, and shall not be required to, provide any further Advances to Borrower. Lender is relying upon Borrower's delivery of, and compliance with, the Apex Budget in accordance with this Section 5.12 in determining to enter into the Post-Petition financing arrangements provided for herein.

5.13 Reorganization Matters.

(a) The Chapter 11 Case was commenced on the Petition Date in accordance with Applicable Law and proper notice thereof and the proper notice for (x) the motion seeking approval of the Loan Documents and the Interim Order and Final Order, (y) the hearing for the approval of the Interim Order, and (z) the hearing for the approval of the Final Order has been or will be given. Borrower shall give, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Case having priority over all administrative expense claims and unsecured claims against Borrower now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject, as to priority only to the Carve-Out Expenses as set forth in the Interim Order and the Final Order.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected Lien on all Collateral, subject, as to priority, only to the Carve-Out Expenses up to the Carve-Out Amount as set forth in the Interim Order and the Final Order.

(d) The Interim Order (with respect to the period prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the

case may be, is in full force and effect has not been reversed, stayed, modified or amended (without the express written consent of Lender).

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, Lender shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under Applicable Law, without further application to or order by the Bankruptcy Court.

6. **FINANCIAL STATEMENTS AND INFORMATION**

6.1 Reports and Notices. Borrower hereby agrees that from and after the Closing Date and until the Satisfaction Date, it shall deliver to Lender the financial statements, notices and other information at the times, to the Persons and in the manner set forth in Annex C.

6.2 Communication with Financial Advisors. Borrower authorizes Lender to communicate directly with Borrower's financial advisors, investment bankers and consultants, and authorizes and shall instruct those financial advisors, investment bankers and consultants to communicate to Lender information relating to Borrower with respect to the business, results of operations and financial condition of Borrower.

7. AFFIRMATIVE COVENANTS

Borrower agrees that from and after the date hereof and until the Satisfaction Date:

7.1 Disclosure Statement. Borrower shall file a disclosure statement with the Bankruptcy Court by January 20, 2009, which shall be, in form and substance, reasonably satisfactory to the Lender.

7.2 Information Regarding Collateral. Borrower will furnish to Lender prompt written notice of any change (i) in Borrower's corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in the location of Borrower's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) in Borrower's corporate structure or jurisdiction of organization, or (iv) in Borrower's Federal Taxpayer Identification Number or organizational identification number assigned to it by its jurisdiction of organization. Borrower also agrees to promptly notify Lender if any material portion of the Collateral is damaged or destroyed.

7.3 Existence; Conduct of Business. Except as occasioned by the Chapter 11 Case, Borrower will do or cause to be done all things necessary to comply with its respective Governing Documents, and to preserve, renew and keep in full force and effect its (a) legal existence and (b) at all times as may be necessary to effectuate the Sale Transaction, the rights, Licenses, permits, privileges, franchises, Patents, Copyrights, Trademarks and trade names material to the conduct of its business or the business of its Subsidiaries.

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7.4 Payment of Obligations. Borrower will pay its Post-Petition Indebtedness and other obligations in accordance with the Apex Budget and as permitted by Section 5.12.

7.5 Maintenance of Properties. Borrower will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear, casualty and condemnation each excepted.

7.6 Books and Records; Inspection Rights. Borrower shall cause MSC to keep proper books of record and account consistent with past practices previously disclosed to Lender and in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities, including its dealings and transactions with its Subsidiaries. Borrower will and will cause MSC to permit any representatives designated by Lender to visit and inspect its and MSC's properties, to examine and make extracts from its and MSC's books and records, and to discuss its and MSC's affairs, finances and condition with its officers and independent accountants, all at such reasonable times during normal business hours and as often as reasonably requested.

7.7 Compliance with Applicable Laws. Borrower will comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

7.8 Use of Proceeds. The proceeds of the Loan made hereunder will be used only as set forth in Section 2.5. No part of the proceeds of the Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Federal Reserve Board, including Regulations U and X.

7.9 Fee Approval and Support Motions. The Bankruptcy Court shall have entered orders (a) approving the Fee Approval Motion within ten (10) days of the Petition Date or such later date that the Bankruptcy Court holds a hearing to consider approval of the Fee Approval Motion, which shall, in no event be later than twenty (20) days following the Petition Date, and (b) approving the Support Motion (x) on an interim basis within ten (10) days of the Petition Date and (y) on a final basis within twenty (20) days of the Petition Date, in each case, in form and substance reasonably acceptable to Lender.

7.10 Further Assurances.

(a) Borrower will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Applicable Law, or which Lender may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Collateral Documents or the validity or priority of any such Lien, all at the expense of Borrower. Borrower also agrees to provide to Lender, from time to time upon request, evidence reasonably satisfactory to Lender as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents, including periodic Lien searches as deemed necessary by Lender in its reasonable discretion.

(b) If any material assets are acquired by Borrower after the Closing Date (other than assets constituting Collateral hereunder that become subject to the Lien of Lender upon acquisition thereof), Borrower will notify Lender thereof, and Borrower will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or reasonably requested by Lender to grant and perfect such Liens, including actions described in paragraph (a) of this Section 7.10, all at the expense of Borrower.

7.11 Satisfied Liens. Borrower will use its commercially reasonable efforts to take such steps as are necessary to cause any existing financing statement, mortgage, deed of trust or similar instrument evidencing a security interest or lien securing obligations which have been paid or otherwise satisfied in full to be terminated, released or discharged as appropriate, including making written requests for appropriate instruments of termination or release from the relevant secured parties or collateral agent. Borrower will provide copies of any such terminations or releases to Lender.

8. NEGATIVE COVENANTS

Borrower agrees that from and after the date hereof until the Satisfaction Date:

8.1 Indebtedness and Other Obligations.

(a) Borrower will not create, incur, assume or permit to exist any Post-Petition Indebtedness, except:

(i) Indebtedness created under the Loan Documents;

(ii) Indebtedness which may be deemed to exist as of the date hereof, pursuant to any guaranties, performance, surety, statutory appeal or similar obligations incurred in the ordinary course of business;

(iii) Upon prior notice to Lender, Indebtedness incurred to finance insurance premiums and owing to the applicable insurance company providing the applicable policy; and

(iv) other unsecured Indebtedness at any time outstanding in the ordinary course of business.

Furthermore, no Indebtedness under clauses (ii), (iii) or (iv) shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or pari passu with the super-priority administrative expense claims of Lender, as set forth herein and in the Interim Order and the Final Order.

8.2 Liens. Borrower will not create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

- (c) Intentionally deleted.
- (d) Liens securing Indebtedness permitted by Section 8.1(a)(iii) (solely with respect to such insurance policies and the proceeds thereof);
- (e) Liens in the nature of the right of setoff in favor of counterparties (including depositories) to contractual agreements with the Borrower in the ordinary course of business; and
- (f) any Lien on any property or asset of Borrower set forth in Schedule 8.2, provided that (i) such Lien shall not apply to any other property or asset of Borrower and (ii) such Lien shall secure only those obligations that it secures as of the Petition Date, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof.

8.3 Fundamental Changes.

- (a) Borrower will not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve.
- (b) Borrower will not engage to any material extent in any business other than businesses of the type conducted by Borrower on the date of execution of this Agreement and businesses reasonably related, ancillary or complementary thereto.

8.4 Investments, Loans, Advances, Guarantees and Acquisitions. Borrower will not purchase, hold or acquire (including pursuant to any merger with any Person) any Stock, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, guarantee any obligations of, or make or permit to exist any Investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

- (a) Investments existing on the Closing Date, and set forth on Schedule 8.4;
- (b) Investments made in Apex Luxembourg and Apex Sweden pursuant to this Agreement (the proceeds of which Investments Apex Sweden and Apex Luxembourg shall use in accordance with Section 2.5);
- (c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;
- (d) Loans or advances to employees for the purpose of travel, entertainment or relocation in the ordinary course of business;

- (e) Investments in Borrower and its Subsidiaries in accordance with the Apex Budget and as permitted by Section 5.12;
- (f) Cash Equivalents; and
- (g) Investments consisting of auction-rate securities made in the ordinary course of business consistent with past practice.

8.5 Asset Sales. Borrower will not sell, transfer, lease or otherwise dispose of any asset, including any Stock or other ownership interest, except sales pursuant to or in connection with the Purchase Agreement and disposition of Investments permitted by Section 8.4(e) or (f) in the ordinary course of business.

8.6 Restricted Payments; Certain Payments of Indebtedness.

- (a) Borrower will not declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment.

(b) Borrower will not make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash securities or other property) of or in respect of any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness (Pre-Petition or otherwise), except:

- (i) payment of regularly scheduled interest, principal payments and other charges, as and when due in respect to any Post-Petition Indebtedness permitted hereunder;
- (ii) refinancings of Indebtedness described in clause (i), above, to the extent permitted by Section 8.1; and
- (iii) without duplication, payments permitted pursuant to the MSC Projected Cash Forecast and the Apex Budget.

8.7 Transactions with Affiliates. Borrower will not sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions in the ordinary course of business that are at prices and on terms and conditions not less favorable to Borrower than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions expressly contemplated by this Agreement, (c) compensation arrangements for directors, officers and other employees of Borrower entered into in the ordinary course of business, and (d) transactions permitted under the Purchase Agreement.

8.8 Restrictive Agreements. Borrower will not directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of Borrower to create, incur or permit to exist any Lien upon any of its property or assets in favor of Lender, as additional collateral for the Obligations, or otherwise,

except as provided for herein below, provided that (i) the foregoing shall not apply to restrictions and conditions imposed by Applicable Law or by any Loan Document, (ii) the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (iii) the foregoing shall not apply to customary provisions in Leases restricting the assignment or subleasing thereof.

8.9 Amendment of Material Documents. Borrower will not terminate, amend, modify or waive any of its rights under (a) its Governing Documents, (b) any Leases the termination of which would result in a Material Adverse Effect), or (c) any other instruments, documents or agreements to the extent that such termination, amendment, modification or waiver of any such instrument, document or agreement would be adverse to the interests of Lender.

8.10 Additional Subsidiaries. Borrower will not create any additional Subsidiary except as permitted by the Plan Support Agreement.

8.11 Fiscal Year. Borrower shall not change its fiscal year without furnishing prior written notice to Lender.

8.12 Environmental Laws. Borrower shall not (a) fail to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, or (b) become subject to any Environmental Liability, which, in either event, is reasonably likely to have a Material Adverse Effect.

8.13 Repayment of Indebtedness. Except pursuant to a confirmed reorganization plan and except as specifically permitted hereunder, Borrower shall not, without the prior written consent of Lender or pursuant to an order of the Bankruptcy Court after notice and hearing, make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the filing of the Chapter 11 Case that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

8.14 Chapter 11 Claims. Borrower shall not incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claims of Lender against Borrower.

9. TERM

9.1 Termination. The Commitment contemplated hereby shall be available to Borrower until the Commitment Termination Date, and the Loan and all other Obligations shall be automatically due and payable in full on such date except as otherwise provided for in Section 2.10.

9.2 Survival of Obligations Upon Termination of Financing Arrangements. Except as otherwise expressly provided for in the Loan Documents, no termination or cancellation (regardless of cause or procedure) of any Commitment under this Agreement shall in any way affect or impair the obligations, duties and liabilities of Borrower or the rights of Lender relating to any unpaid portion of the Loan or any other Obligations, due or not due, liquidated, contingent or unliquidated, or any

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transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Commitment Termination Date. Except as otherwise expressly provided herein or in any other Loan Document, all undertakings, agreements, covenants, warranties and representations of or binding upon Borrower, and all rights of Lender, all as contained in the Loan Documents, shall not terminate or expire, but rather shall survive any such termination or cancellation and shall continue in full force and effect until the Satisfaction Date; provided that the provisions of Section 13, the payment obligations under Section 2.10, and Borrower's indemnities contained in the Loan Documents shall survive the Satisfaction Date.

10. EVENTS OF DEFAULT; RIGHTS AND REMEDIES

10.1 Events of Default. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion to, hearing before, or order of the Bankruptcy Court or any notice to Borrower, and subject to Section 10.2(b), the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) Borrower (i) fails to make any payment of principal of, or interest on, Fees owing in respect of, the Loan or any of the other Obligations within three (3) Business Days of when due and payable, or (ii) fails to pay or reimburse Lender for any expense reimbursable hereunder or under any other Loan Document within five (5) days following Lender's demand for such reimbursement or payment of expenses.

(b) Borrower fails or neglects to perform, keep or observe (i) any of the provisions of Sections 2.5, 2.7, 2.9, 2.11, 2.12, 2.13, 3.1, 3.2, 3.3, 5.11, 5.12, 7.1, 7.2, 7.3(a), 7.6, 7.7, 7.8, 7.9, 7.10 or 8, and the same shall remain unremedied for five (5) Business Days or more.

(c) Borrower fails or neglects to perform, keep or observe any other provision of this Agreement or of any of the other Loan Documents (other than any provision embodied in or covered by any other clause of this Section 10.1) in any material respect and the same shall remain unremedied for ten (10) days or more.

(d) Except for defaults occasioned by the filing of the Chapter 11 Case and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits Borrower from complying or permits Borrower not to comply, a default or breach occurs under any other agreement, document or instrument in respect of Indebtedness in a principal amount exceeding \$50,000 entered into either (x) Pre-Petition and which is affirmed after the Petition Date or is not subject to the automatic stay provisions of Section 362 of the Bankruptcy Code, or (y) Post-Petition, to which Borrower is a party that is not cured within any applicable grace period therefor.

(e) Any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or Borrower shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or

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any Lien created under any Loan Document ceases to be a valid and perfected first-priority Lien (except as otherwise permitted herein or therein) in any of the Collateral purported to be covered thereby.

- (f) Any Change in Control of Borrower occurs.
- (g) The occurrence of any uninsured loss to any material portion of the Collateral.
- (h) The occurrence of any of the following in the Chapter 11 Case:

- (i) the bringing of a motion, or the execution of a written agreement, or the filing of any plan of reorganization or disclosure statement attendant thereto by Borrower in the Chapter 11 Case: (w) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (x) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral; (y) except as provided in the Interim or Final Order, as the case may be, to use Cash Collateral of Lender under Section 363(c) of the Bankruptcy Code without the prior written consent of Lender; or (z) any other action or actions materially adverse to Lender or its rights and remedies hereunder or their interest in the Collateral;

- (ii) the filing by Borrower of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by Borrower or any other Person to which Lender does not consent or the entry of any order terminating Borrower's exclusive rights to file a plan of reorganization;

- (iii) the entry of an order in the Chapter 11 Case confirming a plan or plans of reorganization that do not contain a provision for termination of the Commitments and repayment in full in cash of all of the Obligations under this Agreement, the Sumitomo Secured Lender Claim, and Lender's Break-Up Fee and Reimbursement Amount, on or before the effective date of any such plan except as otherwise agreed to by Lender;

- (iv) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents or the Interim Order or the Final Order without the written consent of Lender or the filing of a motion for reconsideration with respect to the Interim Order or the Final Order;

- (v) the Interim Order is not entered on or before five (5) days after the Petition Date;

- (vi) the Final Order is not entered on or before thirty (30) days after the Petition Date;

- (vii) the payment of, or application for authority to pay, any Pre-Petition claim without Lender's prior written consent unless otherwise permitted under this Agreement;

- (viii) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against Lender or any of the Collateral;

- (ix) the appointment of an interim or permanent trustee in the Chapter 11 Case or the appointment of a receiver or an examiner in the Chapter 11 Case;

- (x) the dismissal of the Chapter 11 Case, or the conversion of the Chapter 11 Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or Borrower shall file a motion or other pleading seeking the dismissal of the Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise;

- (xi) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a Material Adverse Effect;

- (xii) the commencement of a suit or action against Lender and, as to any suit or action brought by any Person other than Borrower, officer or employee of Borrower, the continuation thereof without dismissal for thirty (30) days after service thereof on Lender, that asserts or seeks by or on behalf of Borrower, the U.S. Environmental Protection Agency, any state environmental protection or health and safety agency, any official committee in the Chapter 11 Case or any other party in interest in the Chapter 11 Case, a claim or any legal or equitable remedy that would (a) have the effect of subordinating (x) any or all of the Obligations or Liens of Lender under the Loan Documents to any other claim or (y) the Sumitomo Secured Lender Claim to any other claim or challenging

Lender's security interest in the collateral securing the Sumitomo Secured Lender Claim, or (b) have a material adverse effect on the rights and remedies of Lender under any Loan Document or the collectability of all or any portion of the Obligations;

(xiii) the entry of an order in the Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(xiv) the failure of Borrower to perform any of its obligations under the Interim Order, the Final Order or the Fee Approval Order (as such term is defined in the Purchase Agreement);

(xv) the Purchase Agreement is terminated by either party thereto for any reason; and

(xvi) the entry of an order in the Chapter 11 Case granting (i) any other super-priority administrative claim or (ii) Lien equal or superior to that granted to Lender, other than the Carve-Out Expenses, in each case as set forth in the Interim Order and the Final Order.

10.2 Remedies.

(a) If any Event of Default has occurred and is continuing, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, subject to the Interim Order and the Final Order, suspend the Loan facility with respect to additional Advances, whereupon any additional Advances shall be made or incurred in Lender's sole discretion so long as such Default or Event of Default is continuing. If any Event of Default has occurred and is continuing, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, except as otherwise expressly provided herein, increase the rate of interest applicable to the Loan to the Default Rate.

(b) If any Event of Default has occurred and is continuing, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court: (i) terminate the Loan facility with respect to further Advances; (ii) reduce the Commitment from time to time; (iii) declare all or any portion of the Obligations, including all or any portion of the Loan to be forthwith due and payable, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower; or (iv) exercise any rights and remedies provided to Lender under the Loan Documents or at law or equity, including all remedies provided under the Code; and pursuant to the Interim Order and the Final Order, the automatic stay of Section 362 of the Bankruptcy Code shall be modified and vacated to permit Lender to exercise its remedies under this Agreement and the Loan Documents, without further notice, application or motion to, hearing before, or order from, the Bankruptcy Court, provided, however, notwithstanding anything to the contrary contained herein, that Lender shall be permitted to exercise any remedy in the nature of a liquidation of, or foreclosure on, any interest of Borrower in the Collateral only upon five (5) Business Days' prior written notice to Borrower, counsel approved by the Bankruptcy Court for any Committee appointed in the Chapter 11 Case and the United States Trustee and as set forth in the Interim Order or the Final Order (when applicable). Upon the occurrence of an Event of Default and the exercise by Lender of its rights and remedies under this Agreement and the other Loan Documents, Borrower shall use commercially reasonable efforts to assist Lender in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to Lender.

10.3 Waivers by Borrower. Except as otherwise provided for in this Agreement or by Applicable Law, Borrower waives:

(a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, Instruments, chattel paper and guaranties at any time held by Lender on which Borrower may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard, (b) all rights to notice and a hearing prior to Lender's taking possession or control of, or to Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Lender to exercise any of its remedies, and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

11. RESERVED

12. SUCCESSORS AND ASSIGNS

12.1 Successors and Assigns. This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of Borrower, Lender and their respective successors and assigns (including, in the case of Borrower, a Debtor-in-Possession on behalf of Borrower), except as otherwise provided herein or therein. Neither Borrower nor Lender may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the other party. Any such purported assignment, transfer, hypothecation or other conveyance by Borrower or Lender without the prior express written consent of the other party shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of Borrower and Lender with respect to the transactions contemplated hereby and no Person shall be a third-party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

13. MISCELLANEOUS

13.1 Complete Agreement; Modification of Agreement. The Loan Documents and the Purchase Agreement constitute the complete agreement between the parties with respect to the subject matter thereof and may not be modified, altered or amended except as set forth in Section 13.2. Any letter of intent, commitment letter, fee letter or confidentiality agreement, if any, between Borrower and Lender or any of their respective Affiliates, predating this Agreement and relating to a financing of substantially similar form, purpose or effect (other than the Working Capital Loan Agreement, which shall remain in full force and effect unaffected by this Agreement or the other Loan Documents), shall be superseded by this Agreement.

13.2 Amendments and Waivers.

(a) Except for actions expressly permitted to be taken by Lender, no amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, or any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and Borrower.

(b) Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination or waiver shall be required for Lender to take additional Collateral pursuant to any Loan Document. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

(c) Upon payment in full in cash and performance of all of the Obligations (other than indemnification Obligations), termination of the Commitments and a release of all claims against Lender, and so long as no suits, actions, proceedings or claims are pending or threatened against any Indemnified Person asserting any damages, losses or liabilities that are Indemnified Liabilities, Lender shall deliver to Borrower termination statements, mortgage Releases and other documents necessary or appropriate to evidence the termination of the Liens securing payment of the Obligations.

13.3 No Waiver. Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Subject to the provisions of Section 13.2, none of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Agreement or any of the other Loan Documents and no Default or Event of Default by Borrower shall be deemed to have been suspended or waived by Lender, unless such waiver or suspension is by an instrument in writing signed by or on behalf of Lender, and directed to Borrower specifying such suspension or waiver.

13.4 Remedies. Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that Lender may have under any other agreement, including the other Loan Documents, by operation of Applicable Law or otherwise. Recourse to the Collateral shall not be required.

13.5 Severability. Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such a manner as to be effective and valid under Applicable Law, but if any provision of this Agreement or any other Loan Document shall be

prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such other Loan Document.

13.6 Conflict of Terms. Except as otherwise provided in this Agreement or any of the other Loan Documents by specific reference to the applicable provisions of this Agreement, and subject to the immediately following sentence, if any provision contained in this Agreement conflicts with any provision in any of the other Loan Documents, the provision contained in this Agreement shall govern and control. NOTWITHSTANDING THE FOREGOING, IF ANY PROVISION IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT CONFLICTS WITH ANY PROVISION IN THE INTERIM ORDER OR FINAL ORDER, THE PROVISION IN THE INTERIM ORDER OR FINAL ORDER SHALL GOVERN AND CONTROL.

13.7 Confidentiality. Lender agrees to use commercially reasonable efforts (equivalent to the efforts Lender applies to maintaining the confidentiality of its own confidential information) to maintain as confidential all confidential information provided to them by Borrower and designated as confidential for a period of two (2) years following receipt thereof except that Lender may disclose such information (a) to Persons employed or engaged by Lender; (b) to any bona fide assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 13.7 (and any such bona fide assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any Governmental Authority or reasonably believed by Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Lender's counsel, is required by Applicable Law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any Legal Proceeding to which Lender is a party; or (f) that ceases to be confidential through no fault of Lender.

13.8 GOVERNING LAW. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THE LOAN DOCUMENTS AND THE OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA (INCLUDING THE BANKRUPTCY CODE). BORROWER HEREBY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER AND LENDER PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED THAT LENDER AND BORROWER ACKNOWLEDGE THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF LENDER. BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION THAT BORROWER MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN ANNEX D OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE UNITED STATES MAILED, PROPER POSTAGE PREPAID.

13.9 Notices.

(a) Addresses. All notices, demands, requests, directions and other communications required or expressly authorized to be made by this Agreement shall, whether or not specified to be in writing but unless otherwise expressly specified to be given by any other means, be given in writing and (i) addressed to the party to be notified and sent to the address or facsimile number indicated in Annex D, or (ii) addressed to such other address as shall be notified in writing to the other parties hereto. Transmission by electronic mail shall not be sufficient or effective to transmit any such notice under this clause (a).

(b) Effectiveness. All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this

Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon Personal delivery, (ii) if delivered by overnight courier service, one (i) Business Day after delivery to such courier service, (iii) if delivered by mail, when deposited in the mails, and (iv) if delivered by facsimile, upon sender's receipt of confirmation of proper transmission. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than Borrower or Lender) designated in Annex D to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice.

13.10 Section Titles. The Section titles and Table of Contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of this Agreement between the parties hereto.

13.11 Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one agreement.

13.12 WAIVER OF JURY TRIAL. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG LENDER AND BORROWER ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH, THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO.

13.13 Press Releases and Related Matters. Borrower and Lender shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or other public statements with respect to this Agreement or the transactions contemplated hereunder and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, Legal Proceedings or by obligations pursuant to any listing agreement with any national securities exchange.

13.14 Reinstatement. This Agreement shall remain in full force and effect and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to Applicable Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof,

is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed, reduced only by such amount paid and not so rescinded, reduced, restored or returned.

13.15 Advice of Counsel. Each of the parties represents to each other party hereto that it has discussed this Agreement and, specifically, the provisions of Sections 13.8 and 13.12, with its counsel.

13.16 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

13.17 Parties Including Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon Borrower, the estate of Borrower, and any trustee, other estate representative or any successor in interest of Borrower in the Chapter 11 Case or any subsequent case

commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of Lender and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of Borrower to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that Lender file financing statements or otherwise perfect its Liens under Applicable Law.

13.18 USA PATRIOT Act Notice. To the extent that Lender is subject to the Patriot Act (as hereinafter defined), Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender, as applicable, to identify Borrower in accordance with the Patriot Act.

13.19 Lender Standstill. Notwithstanding anything to the contrary set forth herein, from the date hereof until the Commitment Termination Date, Lender shall and hereby agrees, and shall cause its subsidiaries and Affiliates, to forbear from exercising any rights or remedies, as applicable under the Working Capital Loan Agreement, the Common Security Agreement, the Senior Loan Agreements (as defined in the Common Security Agreement) or any other Financing Document (as defined in the Common Security Agreement) or applicable non-bankruptcy law in respect of any Event of Default (as defined in the Common Security Agreement) under the Common Security Agreement, any and all other defaults under any of the Financing Documents and any and all defaults under the Working Capital Loan Agreement, provided, however, that nothing contained herein shall prevent or otherwise limit Sumitomo or its affiliates from (i) accelerating and sending a notice declaring that the Senior Loans have accelerated and are due and payable, making a written demand for payment of the Guaranteed

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Obligations (as such term is defined in the Completion Agreement) pursuant to the Completion Agreement or filing and prosecuting the Sumitomo Senior Lender Claim in the Bankruptcy Court in a manner consistent with the Plan Support Agreement; (ii) now and in the future taking such steps or actions as it or they deem necessary in order to exercise rights and remedies available to Sumitomo under the Senior Loans, the Common Security Agreement, the Sponsor and Pledge Agreement, the Completion Agreement, any other Financing Document, and the Working Capital Loan Agreement following the termination of this Agreement; or (iii) taking any and all steps or actions necessary to protect and preserve its or their security interest in any and all collateral pledged to secure the Senior Loans, the Working Capital Loan Agreement or the Obligations, including, without limitation the perfection or continuation of perfection of its or their liens therein.

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IN WITNESS WHEREOF, the parties hereto have caused this Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement to be duly executed and delivered as of the date first above written.

APEX SILVER MINES LIMITED,

as Borrower

By: /s/ Robert P. Vogels

Name: Robert P. Vogels

Title: Vice President and Controller

SUMITOMO CORPORATION,

as Lender

By: /s/ Tatsumi Kohara

ANNEX A (RECITALS)
TO
CREDIT AGREEMENT
DEFINITIONS

Capitalized terms used in the Loan Documents shall have (unless otherwise provided elsewhere in the Loan Documents) the following respective meanings, and all references to Sections, Exhibits, Schedules or Annexes in the following definitions shall refer to Sections, Exhibits, Schedules or Annexes of or to this Agreement:

“Account Debtor” means any Person obligated to make payment on any monetary obligation, now or hereafter owing to the Borrower, evidenced by accounts, Instruments, Chattel Paper, payment intangibles or general intangibles.

“Advance” has the meaning ascribed thereto in Section 2.1(a)(i).

“Affiliate” means, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, 10% or more of the Stock having ordinary voting power in the election of directors of such Person, and (b) each Person that controls, is controlled by or is under common control with such Person. For the purposes of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; provided, however, that with respect to Borrower, the term “Affiliate” shall specifically exclude Lender.

“Agreement” has the meaning ascribed thereto in the preamble hereto.

“Alternative Transaction” has the meaning ascribed thereto in the Purchase Agreement.

“AMM” has the meaning ascribed thereto in the Recitals.

“Apex” has the meaning ascribed thereto in the preamble to this Agreement.

“Apex Budget” means the budget prepared by Borrower (or restructuring advisors acceptable to Lender) and attached hereto as Exhibit E, as modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods) which modifications or supplements shall not have been rejected in writing by Lender in its sole discretion and in each case as to the initial Budget or subsequent modifications or supplements, with such supporting documentation as reasonably requested by Lender in its sole discretion.

“Apex Luxembourg” has the meaning ascribed thereto in the Recitals.

“Apex Sweden” has the meaning ascribed thereto in the Recitals.

“Applicable Law” means as to any Person: (a) all statutes, rules, regulations, orders, or other requirements having the force of law and applicable to such Person, and (b) all court orders and injunctions, and/or similar rulings and applicable to such Person, in each instance ((a) and (b))

of or by any Governmental Authority, or court, or tribunal which has jurisdiction over such Person, or any property of such Person including the Bankruptcy Code.

“Bankruptcy Code” has the meaning ascribed thereto in the Recitals.

“Bankruptcy Court” has the meaning ascribed thereto in the Recitals.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Case.

“Borrower” has the meaning ascribed thereto in the preamble to this Agreement.

“Break-Up Fee” has the meaning ascribed thereto in the Purchase Agreement.

“Budget Report” has the meaning ascribed thereto in Section 5.12(a).

“Business Day” means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in New York, New York or Tokyo, Japan.

“Carve-Out Amount” has the meaning ascribed thereto in Section 2.9(c).

“Carve-Out Expenses” has the meaning ascribed thereto in Section 2.9(c).

“Case Professionals” has the meaning ascribed thereto in Section 2.9(c).

“Cash Collateral” means the cash collateral (within the meaning of Section 363 of the Bankruptcy Code) subject to the Liens securing the Obligations or any portion thereof.

“Cash Collateral Account” has the meaning ascribed thereto in Section 3.3.

“Cash Equivalents” means, as at any date of determination, (a) any evidence of Indebtedness with a maturity date of ninety (90) days or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers’ acceptances with a maturity of ninety (90) days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$1,000,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of ninety (90) days or less issued by a corporation (except an Affiliate of Borrower) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by S & P or at least P-1 by Moody’ s; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution having combined capital and surplus and undivided profits of not less than \$1,000,000,000; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within ninety (90) days or less from the date of acquisition provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by

the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the type described in clauses (a) through (e) above.

“Chapter 11 Case” has the meaning ascribed thereto in the recitals to this Agreement.

“Charges” means all federal, state, county, city, municipal, local, foreign or other governmental taxes, levies, assessments, charges, Liens, claims or encumbrances upon or relating to (a) the Collateral, (b) the Obligations, (c) the employees, payroll, income or gross receipts of Borrower, (d) Borrower’s ownership or use of any properties or other assets, or (e) any other aspect of Borrower’s business.

“Chattel Paper” means any “chattel paper,” as such term is defined in the Code, including electronic chattel paper, now owned or hereafter acquired by Borrower.

“Change in Control” means, at any time, (a) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated; or (b) any person (within the meaning of the Securities and Exchange Act of 1934, as amended) is or becomes the beneficial owner (with the meaning of Rule 13d-3 and 13d-5 of the Securities and Exchange Act of 1934, as amended), directly or indirectly, of fifty percent (50%) or more of the aggregate voting power represented by the outstanding capital stock of the Borrower on a fully diluted basis, whether as a result of the issuance of securities of the Borrower, any merger, consolidation, or otherwise.

“Closing Date” means the date of this Agreement.

“Closing Checklist” means the schedule, including all appendices, exhibits or schedules thereto, listing certain documents and information to be delivered in connection with this Agreement, the other Loan Documents and the transactions contemplated thereunder, substantially in the form attached hereto as Annex B.

“Code” means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York; provided that to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Lender’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

“Collateral” has the meaning ascribed thereto in Section 3.1.

“Collateral Documents” means all agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations.

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“Commitment” means the aggregate commitment of Lender to make Advances, which aggregate commitment shall be thirty-five million Dollars (\$35,000,000) on the Closing Date, as such amount may be adjusted, if at all, from time to time in accordance with this Agreement.

“Commitment Termination Date” means the earliest of (a) March 31, 2009, (b) the date of termination of Lender’s obligations to make Advances or permit the Loan to remain outstanding pursuant to Section 10.2, (c) thirty day (30) days after the Petition Date if the Final Order has not been entered by the Bankruptcy Court by such date, (d) the date of entry of an order of the Bankruptcy Court confirming a plan of reorganization consented to by Lender consistent with the Plan Support Agreement under which Lender or its affiliate consummates the purchase of the Purchased Properties in accordance with the Purchase Agreement, and (e) Borrower’s or its affiliates’ entry into definitive documentation to consummate an Alternative Transaction.

“Committees” means collectively, the official committee of unsecured creditors and any other committee formed, appointed, or approved in the Chapter 11 Case and each of such committees shall be referred to herein as a Committee.

“Common Security Agreement” means that certain Common Security Agreement, dated as of December 1, 2005 (as amended from time to time), among MSC, Borrower, Apex Sweden, Apex Luxembourg, Apex Silver Finance, Ltd., AMM, Lender, SC Minerals, Comercial Merales Blancos AB, BNP Paribas, Barclays Capital, Corporacion Andina De Fomento, JPMorgan Chase Bank, N.A. and the other parties thereto.

“Completion Agreement” means that certain Completion Agreement, dated as of December 1, 2005, as amended, among ASML, Barclays Capital, BNP Paribas and JPMorgan Chase Bank, N.A..

“Compliance Certificate” has the meaning ascribed thereto in Exhibit E.

“Control Agreement” means with respect to “Securities Accounts” or “Deposit Accounts” (as each is defined in the Code), an agreement, in form and substance satisfactory to the Lender, which effectively gives “control” (as defined in the UCC) to the Lender in such Securities Account and all Investment contained therein or such Deposit Account and all funds contained therein.

“Copyright License” means any and all rights now owned or hereafter acquired by any Borrower under any written agreement granting any right to use any Copyright or Copyright registration.

“Copyrights” means all of the following now owned or hereafter adopted or acquired by Borrower: (a) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof; and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof.

“Default” means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

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“Default Rate” has the meaning ascribed thereto in Section 2.6(b).

“Disbursement Request” has the meaning ascribed thereto in Section 2.1(a)(iii).

“Disclosure Schedules” means the Schedules prepared by Borrower and denominated as Schedules 3.3, 5.5, 8.1, 8.2, and 8.4 in this Agreement.

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

“Environmental Laws” means all applicable federal, state, local and foreign laws, statutes, ordinances, codes, rules, standards and regulations, now or hereafter in effect, and any applicable judicial or administrative interpretation thereof including any applicable judicial or administrative order, consent decree, order or judgment, imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation).

“Environmental Liabilities” means, with respect to any Person, all liabilities, obligations, responsibilities, response, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs, losses, damages, punitive damages, property damages, natural resource damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of or related to any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including any arising under or related to any Environmental Laws, Environmental Permits,

or in connection with any Release or threatened Release or presence of a hazardous material whether on, at, in, under, from or about or in the vicinity of any real or Personal property.

“Environmental Permits” means all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws.

“Equipment” means all “equipment,” as such term is defined in the Code, now owned or hereafter acquired by Borrower, wherever located and, in any event, including all Borrower’s machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling Stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of Real Estate, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

“Event of Default” has the meaning ascribed thereto in Section 10.1.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

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“Fees” means any and all fees payable to Lender pursuant to this Agreement or any of the other Loan Documents.

“Final Order” means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be satisfactory in form and substance to Lender, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied unless Lender waives such requirement, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to Lender, which, among other matters but not by way of limitation, authorizes Borrower to obtain credit, incur Indebtedness, and grant Liens under this Agreement and the other Loan Documents, as the case may be, and provides for the super priority of Lender’s claims, substantially in the form of Exhibit D.

“Financial Officer” means, with respect to Borrower, the chief financial officer, vice president of finance, director of finance, treasurer, controller or assistant controller of Borrower.

“Fixtures” means all “fixtures” as such term is defined in the Code, now owned or hereafter acquired by Borrower.

“GAAP” means generally accepted accounting principles in the United States of America consistently applied.

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational or governing documents of such Person.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Indebtedness” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property, payment for which is deferred six (6) months or more, but excluding obligations to trade creditors incurred in the ordinary course of business that are unsecured and not overdue by more than three (3) months unless being contested in good faith, (b) all reimbursement and other obligations with respect to letters of credit, bankers’ acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) and (d) with respect to Borrower, the Obligations.

“Indemnified Liabilities” has the meaning ascribed thereto in Section 2.7.

“Indemnified Person” has the meaning ascribed thereto in Section 2.7.

“Initial Disbursement Date” has the meaning ascribed thereto in Section 2.1(a)(ii).

“Instruments” means all “instruments,” as such term is defined in the Code, now owned or hereafter acquired by Borrower, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness,

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other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

“Intellectual Property” means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks.

“Interest Payment Account” means such account as specified in writing by Lender as the “Interest Payment Account.”

“Interest Payment Date” means each of (x) the date upon which all of the Commitments have been terminated and the Loans have been paid in full and (y) the Commitment Termination Date shall be deemed to be an “Interest Payment Date” with respect to any interest that has then accrued under the Agreement.

“Interest Rate” means the rate of interest set forth in Section 2.6(a), together with any applicable increases thereon.

“Interim Order” means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other Applicable Law), together with all extension, modifications, and amendments thereto, in form and substance satisfactory to Lender, which, among other matters but not by way of limitation, authorizes, on an interim basis, Borrower to execute and perform under the terms of this Agreement and the other Loan Documents, substantially in the form of Exhibit C.

“Investment” means (a) any Stock, evidence of Indebtedness or other security of another Person, (b) any loan, advance, contribution to capital, extension of credit (except for current trade and customer accounts receivable in the ordinary course of business and payable in accordance with customary trade terms) to another Person, (c) any purchase of (i) Stock or other securities of another Person, or (ii) any business or undertaking of any Person (whether by purchase of assets or securities), (d) any commitment or option to make any such purchase, or (e) any other investment, in all cases whether now existing or hereafter made.

“Law” or “Laws” means any national, regional, or local, or any foreign, statute, law, code, ordinance, rule, regulation, resolution, judgment, regulatory agreement with a Governmental Authority, or general principle of common or civil law or equity.

“Lease” means any agreement, whether written or oral, no matter how styled or structured, pursuant to which Borrower is entitled to the use or occupancy of any space in a structure, land, improvement or premise for any period of time.

“Legal Proceeding” means any private or governmental action, suit, complaint, claim, demand, arbitration, legal, or judicial or administrative proceeding or investigation, whether civil, criminal, or of any other nature.

“Lender” has the meaning set forth in the preamble to this Agreement.

“License” means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Borrower.

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“Lien” means any mortgage or deed of trust, pledge, hypothecation, lien, charge, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means, at any time, the aggregate amount of Advances outstanding to Borrower.

“Loan Documents” means this Agreement, the Collateral Documents, and all other agreements, instruments, documents and certificates identified in the Closing Checklist executed and delivered to, or in favor of, Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower or any employee of Borrower, and delivered to Lender in connection with this Agreement or the transactions contemplated thereby, including the Interim Order and the Final Order; provided, however, that the Purchase Agreement shall not be included in such definition. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Margin Stock” has the meaning ascribed to such term in Regulation U.

“Material Adverse Effect” means a material adverse effect, other than the filing of the Chapter 11 Case, on (a) the business, assets, operations, or financial or other condition of Borrower considered as a whole, (b) Borrower’s ability to pay any of the Loans or any of the other Obligations in accordance with the terms of the Agreement, (c) the Collateral or Lender’s Liens on the Collateral or the priority of such Liens, or (d) Lender’s rights and remedies under the Agreement and the other Loan Documents. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then-existing events, other than the filing of the Chapter 11 Case, would result in a Material Adverse Effect. The definition shall exclude any effect resulting from general economic conditions.

“MSC” has the meaning ascribed thereto in the Recitals.

“MSC Projected Cash Forecast” means the cash flow forecast prepared by Borrower in respect of MSC and attached hereto as Exhibit A, as modified or supplemented from time to time by additional cash flow forecasts (covering any time period covered by a prior MSC Projected Cash Forecast or covering additional time periods) which modifications or supplements shall not have been rejected in writing by Lender in its sole discretion and in each case as to the initial MSC Projected Cash Forecast or subsequent modifications or supplements, with such supporting documentation as reasonably requested by Lender in its sole discretion.

“MSC Shareholder Funding Request” has the meaning ascribed thereto in Section 2.1(a).

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“MSC Shareholders Agreement” means the shareholders agreement by Apex Luxembourg, Apex Sweden, Old Metals, SC Minerals, and MSC dated September 25, 2006.

“Obligations” means all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrower to Lender (or any of its respective Affiliates), and all covenants and duties regarding such amounts, of any

kind or nature, present or future, whether or not evidenced by any note, agreement, letter of credit agreement or other instrument, arising under this Agreement or any of the other Loan Documents. This term includes all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against Borrower in bankruptcy, whether or not allowed in such case or proceeding), Fees, expenses, attorneys' fees, and any other sum chargeable to Borrower under this Agreement or any of the other Loan Documents.

“Patent License” means rights under any written agreement now owned or hereafter acquired by Borrower granting any right with respect to any invention on which a Patent is in existence.

“Patents” means all of the following in which Borrower now holds or hereafter acquires any interest: (a) all letters patent of the United States or of any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State, or any other country, and (b) all reissues, continuations, continuations-in-part or extensions thereof.

“Patriot Act” has the meaning ascribed thereto in Section 13.18.

“Permitted Encumbrances” means the following encumbrances: (a) Liens for taxes or assessments or other governmental Charges not yet due and payable or which are being contested in accordance with Section 5.7 or to the extent that Borrower does not take any action (including by way of motion or application to the Bankruptcy Court) to pay, and are permitted under the Bankruptcy Code to not pay, such charges; (b) pledges or deposits of money securing statutory obligations under workmen' s compensation, wage, vacation pay, old-age pension, unemployment insurance, social security or public liability laws or similar legislation (excluding Liens under ERISA); (c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the repayment of borrowed money) or Leases to which Borrower is a party as lessee made in the ordinary course of business; (d) inchoate and unperfected workers' , mechanics' or similar Liens arising in the ordinary course of business, so long as such Liens attach only to Equipment, Fixtures and/or Real Estate; (e) deposits securing, or in lieu of, surety, appeal, performance or customs bonds in proceedings to which Borrower is a party; (f) any attachment or judgment Lien not constituting an Event of Default under Section 10.1(h)(i); (g) zoning restrictions, easements, or other restrictions on the use of any Real Estate or other minor irregularities in title (including leasehold title) thereto, so long as the same do not materially impair the use, value, or marketability of such Real Estate; (h) purported Liens evidenced by the filing of precautionary UCC and PPSA financing statements relating solely to operating leases or the consignment of personal property entered into in the ordinary course of business; (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection

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with the importation of goods and securing obligations that are not overdue by more than 30 days; and (j) any Lien primed pursuant to the Interim Order or Final Order or otherwise junior to the Liens granted hereunder.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

“Petition Date” has the meaning ascribed thereto in the recitals to this Agreement.

“Plan Support Agreement” has the meaning ascribed thereto in the recitals to this Agreement.

“Post-Petition” means the time period beginning immediately upon the filing of the Chapter 11 Case.

“Pre-Petition” means the time period ending immediately prior to the filing of the Chapter 11 Case.

“Project Finance Lenders” means BNP Paribas, Barclays Bank PLC, Australia and New Zealand Banking Group Limited, KfW, Natixis, Caterpillar Financial Services (UK) Ltd., N M Rothschild & Sons Limited, Export Development Canada, Fortis Capital Corp., Nordkap Bank AG, Firststrand (Dublin) PLC, and Corporación Andina de Fomento.

“Projected Information” has the meaning ascribed thereto in Section 5.11(a).

“Property” means to any Person, all types of real, personal, tangible, intangible or mixed property owned by such Person whether or not included in the most recent balance sheet of such Person and its Subsidiaries under GAAP.

“Purchase Agreement” has the meaning ascribed thereto in the Recitals.

“Purchased Properties” has the meaning ascribed thereto in the Recitals.

“Real Estate” means all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by Borrower, including all easements, rights-of-way, and similar rights relating thereto and all Leases, tenancies, and occupancies thereof.

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

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

“Reimbursement Amount” has the meaning ascribed thereto in the Purchase Agreement.

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“Release” means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the indoor or outdoor environment, including the movement of Hazardous Material through or in the air, soil, surface water, ground water or property.

“Released Parties” has the meaning ascribed thereto in Section 2.12.

“Restricted Payment” means, with respect to Borrower, (a) the payment of any dividend or the making of any other payment or distribution of cash or other property or assets in respect of Stock; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of such Borrower’s Stock or any other payment or distribution made in respect thereof, either directly or indirectly; (c) any payment or prepayment of principal of premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to, any Subordinated Debt; (d) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Stock of such Borrower now or hereafter outstanding; (e) any payment of a claim for the rescission of the purchase or sale of, or for material damages arising from the purchase or sale of, any shares of such Borrower’s Stock or of a claim for reimbursement, indemnification or contribution arising out of or related to any such claim for damages or rescission; (f) any payment, loan, contribution, or other transfer of funds or other property to any Stockholder of such Borrower other than payment of compensation in the ordinary course of business to Stockholders who are employees or directors of such Person; and (g) any payment of management fees (or other fees of a similar nature) by such Borrower to any Stockholder of Borrower or its Subsidiaries.

“Sale Transaction” means the transaction contemplated pursuant to the Purchase Agreement or any Alternative Transaction.

“Satisfaction Date” means the date on which (i) Lender has waived payment of all then outstanding Advances, accrued interest, Fees and charges pursuant to Section 2.10 or (ii) (a) the Loan has been indefeasibly repaid in full in cash, (b) all other Obligations under this

Agreement and the other Loan Documents have been completely discharged (other than indemnification Obligations not yet due and payable), and (c) Borrower shall have no further right to borrow any monies under this Agreement.

“Senior Loans” means, collectively, the loans made under that certain (i) Loan Agreement, dated as of December 1, 2005, with BNP Paribas, Barclays Bank PLC and certain Senior Lenders and (ii) Senior Loan Agreement, dated as of December 1, 2005, with Corporación Andina de Fomento.

“Sponsor and Pledge Agreement” means that certain Sponsor and Pledge Agreement, dated as of December 1, 2005, as amended, by and among ASML and JPMorgan Chase Bank, N.A.

“Stock” means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including

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common Stock, preferred Stock or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

“Stockholder” means, with respect to any Person, each holder of Stock of such Person.

“Subordinated Debt” means any Indebtedness of Borrower subordinated to the Obligations in a manner and form satisfactory to Lender in its sole discretion, as to right and time of payment and as to any other rights and remedies thereunder.

“Subsequent Disbursement Date” has the meaning ascribed thereto in Section 2.1(a).

“Subsidiary” means, with respect to any Person, (a) any corporation of which an aggregate of more than 50% of the outstanding Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of 50% or more of such Stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than 50% or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of Borrower.

“Sumitomo Secured Lender Claim” means Sumitomo’s claim under the Completion Agreement that has been secured by, amongst other collateral, Borrower’s equity interest in Apex Luxembourg, inclusive of the claims assigned to it by the Project Finance Lenders.

“Support Motion” has the meaning ascribed thereto in the Purchase Agreement.

“Tax Deduction” has the meaning ascribed thereto in Section 2.3(b).

“Taxes” means taxes, levies, imposts, deductions, Charges or withholdings, and all liabilities with respect thereto, excluding taxes or Charges imposed on or measured by the net income of Lender by the jurisdictions under the laws of which Lender is organized or conduct business or any political subdivision thereof.

“Trademark License” means rights under any written agreement now owned or hereafter acquired by Borrower granting any right to use any Trademark.

“Trademarks” means all of the following now owned or hereafter existing or adopted or acquired by Borrower: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States

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Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

“Working Capital Loan Agreement” means that certain Loan Agreement, dated as of August 11, 2008, by and between MSC and SC Minerals, as amended by that certain First Amendment to Loan Agreement dated October 1, 2008, that certain Second Amendment to Loan Agreement dated October 31, 2008, that certain Third Amendment to Loan Agreement dated November 27, 2008, that certain Fourth Amendment to Loan Agreement dated December 17, 2008, and as further amended, modified, supplemented or amended and restated from time to time.

All undefined terms contained in any of the Loan Documents shall, unless the context indicates otherwise, have the meanings provided for by the Code to the extent the same are used or defined therein; in the event that any term is defined differently in different Articles of the Code, the definition in Article 9 shall control. Unless otherwise specified, references in this Agreement or any of the Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in this Agreement. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement or any such Annex, Exhibit or Schedule.

Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; the word “or” is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Loan Documents) or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. References to any agreement, document, or instrument shall be construed at a particular time to refer to such agreement, document or instrument as the same may have been amended, modified, supplemented or replaced as of such time pursuant to the terms thereof. Whenever any provision in any Loan Document refers to the knowledge (or an analogous phrase) of Borrower, such words are intended to signify that Borrower have actual knowledge or awareness of a particular fact or circumstance or that Borrower, if it had exercised reasonable diligence, would have known or been aware of such fact or circumstance.

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ANNEX B (SECTION 4.1(A))
TO
CREDIT AGREEMENT
CLOSING CHECKLIST

In addition to, and not in limitation of, the conditions described in Section 4 of this Agreement, pursuant to Section 4.1, the following items must be received by Lender in form and substance reasonably satisfactory to Lender on or prior to the date of the initial Advance (each capitalized term used but not otherwise defined herein shall have the meaning ascribed thereto in Annex A to this Agreement):

- A. Appendices. All Appendices to this Agreement, in form and substance reasonably satisfactory to Lender.
- B. Security Interests. Evidence satisfactory to Lender that Lender has a valid and perfected security interest in the Collateral.
- C. Governing Documents and Bylaws. Governing Documents, including bylaws or the equivalent thereof, together with all amendments thereto, for Borrower.
- D. Good Standings and Resolutions. For Borrower, (a) (i) good standing certificates in its jurisdiction of incorporation, and (b) resolutions of its Board of Directors, approving and authorizing the execution, delivery and performance of the Loan Documents to which Borrower is a party and the transactions to be consummated in connection therewith, certified as of the Closing Date by Borrower's corporate secretary or an assistant secretary as being in full force and effect without any modification or amendment.
- E. Incumbency Certificates. For Borrower, signature and incumbency certificates of the officers of each such Person executing any of the Loan Documents, certified as of the Closing Date by such Person's corporate secretary or an assistant secretary as being true, accurate, correct and complete.
- F. Officer's Certificate. Lender shall have received duly executed originals of a certificate of a Financial Officer of Borrower, dated the Closing Date, stating that, except for the commencement of the Chapter 11 Case and since the date Borrower filed its last financial statement with the Securities and Exchange Commission (the "SEC"): (i) no Legal Proceedings has been commenced which, if successful, would have a Material Adverse Effect or could challenge any of the transactions contemplated by this Agreement and the other Loan Documents; and (ii) there have been no material Restricted Payments made by Borrower.
- G. MSC Projected Cash Forecast. Lender shall have received the initial MSC Projected Cash Forecast described in Section 5.11.
- H. Apex Budget. Lender shall have received the initial Apex Budget described in Section 5.12.

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Lender may in its sole discretion defer, and thereby waive as a funding condition hereunder, the execution and delivery of one or more of the foregoing items or any other Loan Document or Disclosure Schedule or the execution, delivery or provision any of the documents or other items to be executed and delivered or provided pursuant to this Annex B and the satisfaction of any condition related thereto. In the event of such a deferral and waiver as to any Loan Document, Disclosure Schedule or other document or item, Borrower agrees to execute and deliver such Loan Document or Disclosure Schedule or, as the case may be, execute and deliver or provide such other document or item, in each case, in form and substance satisfactory to Lender, as soon as practicable, but in any event not later than ten (10) days following the date of the Initial Advance, or such later date as Lender may agree.

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ANNEX C (SECTION 6.1)
TO
CREDIT AGREEMENT
FINANCIAL STATEMENTS- REPORTING

- (a) Financial Statements and Other Information: Borrower will promptly furnish to Lender the following:
- (i) any annual or quarterly financial statements prepared in the ordinary course of business (it being understood that if Borrower files annual or quarterly reports with the SEC on Form 10-K or 10-Q, as the case may be, the filing of such report with the SEC shall satisfy the requirements of this clause (i));

(ii) concurrently with any delivery of financial statements under clauses (i) above, a certificate of a Financial Officer of Borrower in the form of Exhibit E (a “Compliance Certificate”) certifying, to the best of his or her knowledge, as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto; and

(iii) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of Borrower and MSC, or compliance with the terms of any Loan Document, as Lender may reasonably request.

(b) Notices of Material Events. Borrower will furnish to Lender prompt written notice of the following:

(i) the occurrence of any Default or Event of Default;

(ii) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Borrower or any Affiliate thereof that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;

(iii) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect;

(iv) any change in Borrower’ executive officers;

(v) any failure by Borrower to pay rent accruing Post-Petition at any of Borrower’ locations, which failure continues for more than ten (10) days following the day on which such rent first came due;

(vi) the discharge by Borrower of its present independent accountants or any withdrawal or resignation by such independent accountants; and

(vii) the filing of any Lien for unpaid taxes against Borrower.

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Each notice delivered under this Annex C shall be accompanied by a statement of a Financial Officer or other executive officer of Borrower setting forth the details of the event or development requiring such notice and, if applicable, any action taken or proposed to be taken with respect thereto.

(c) Bankruptcy Matters. Borrower will furnish to Lender copies of all monthly reports, projections, or other information respecting Borrower’ s business or financial condition or prospects as well as all pleadings, motions, applications and judicial information filed by or on behalf of Borrower with the Bankruptcy Court (including any documents filed under seal with the Bankruptcy Court) or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in the Chapter 11 Case) or the Committee, promptly after the time such document is filed with the Bankruptcy Court, or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in the Chapter 11 Case) or the Committee. Notice of any such motion, pleading or application provided to Lender, shall satisfy any other applicable notice requirements hereunder.

(d) MSC Projected Cash Forecast. From and after the Closing Date, Borrower shall furnish Lender with an updated MSC Projected Cash Forecast at least every week. By no later than 5:00 p.m. (Eastern time) on the Tuesday (or, if not a Business Day, on the next Business Day thereafter) of each week commencing on the week prior to the first Loan Advance Date, Borrower shall furnish to Lender, in form and substance reasonably satisfactory to Lender, a report that sets forth for the immediately preceding period back to the Closing Date, the actual cash disbursements in comparison to the Projected Information for such periods set forth in the MSC Projected Cash Forecast on a cumulative, roll-forward basis.

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ANNEX D (SECTION 13.9)
TO
CREDIT AGREEMENT
NOTICE ADDRESSES

(A) If to Lender, at:

Sumitomo Corporation
8-11, Harumi, 1-chome
Chuo-ku, Tokyo, 104-8610
Japan

Tel: +81-3-5166-4319

Fax: +81-3-5166-6423

Attn: Attn: General Manager, San Cristobal Project Dept.

Copy: Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104

Attn: Michael Graffagna, Norman S. Rosenbaum

If to Borrower, at:

Apex Silver Mines Limited
1700 Lincoln Street, Suite 3050
Denver, Colorado 80203
Facsimile: (303) 839-5907

Attn: Chief Financial Officer

Copy: Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006

Attention: Richard S. Lincer, Sean A. O' Neal

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PURCHASE AND SALE AGREEMENT

Entered into as of January 12, 2009

among

APEX SILVER MINES LIMITED,

APEX LUXEMBOURG S.À R.L.,

APEX SILVER MINES SWEDEN AB,

APEX SILVER MINES CORPORATION,

ASC BOLIVIA LDC, SUCURSAL BOLIVIA, THE BOLIVIAN
BRANCH OF ASC BOLIVIA LDC,

SUMITOMO CORPORATION

AND

SC MINERALS AKTIEBOLAG

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IV

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement is entered into as of January 12, 2009, by and among:

APEX SILVER MINES LIMITED, an exempted company limited by shares organized and existing under the Laws of the Cayman Islands, British West Indies (“Apex”), with its registered office at Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, British West Indies;

APEX LUXEMBOURG S.À R.L., a *société à responsabilité limitée* organized and existing under the Laws of the Grand Duchy of Luxembourg (“Apex Luxembourg”), with its registered office at 13, avenue de la Liberté, L-1931 Luxembourg, registered with the Luxembourg Register of Commerce (*Registre de Commerce et des Sociétés du Grand-Duché de Luxembourg*) under number B 110 956 and with a capital amount of US\$21,516,960.00;

APEX SILVER MINES SWEDEN AB, organization number 556681-9586, a *privat aktiefbolag* organized and existing under the Laws of the Kingdom of Sweden (“Apex Sweden”), with its registered office at c/o Anders Sköldberg, Ernst & Young AB, 401 82 Göteborg, Sweden;

APEX SILVER MINES CORPORATION, a Delaware corporation (“Service Company”), having its principal place of business at 1700 Lincoln Street, Suite 3050, Denver, Colorado 80203, U.S.A.;

ASC BOLIVIA LDC, SUCURSAL BOLIVIA, the branch, existing under the Laws of Bolivia, with domicile at Calle Campos N° 265, La Paz, Bolivia and with register of commerce number 13931, of ASC Bolivia LDC, an exempted limited duration company organized under the Laws of the Cayman Islands, British West Indies ("ASC Bolivia"), with its registered office at Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, British West Indies;

SUMITOMO CORPORATION, a corporation organized and existing under the Laws of Japan ("Sumitomo"), with its headquarters at 8-11, Harumi, Chuo-ku, Tokyo 104-8610, Japan; and

SC MINERALS AKTIEBOLAG, organization number 556702-1083, a *privat aktiebolag* organized and existing under the Laws of the Kingdom of Sweden ("SC Minerals"), with its registered office at c/o Ernst & Young AB, 401 82 Göteborg, Sweden.

Apex, Apex Luxembourg, Apex Sweden, Service Company and ASC Bolivia are sometimes referred to individually as a "Seller" and collectively as the "Sellers", and any Sumitomo Affiliate that Sumitomo designates as a purchaser of the Purchased Properties are sometimes referred to individually as an "SC Designated Purchaser" and collectively, together with Sumitomo and SC Minerals, the "Purchasers". The Sellers, as a group, and the Purchasers, as a group, are sometimes referred to herein as a "Party" and both groups collectively as the

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"Parties." Capitalized terms used and not otherwise defined in this Agreement have the respective meanings ascribed thereto in Annex I.

RECITALS

A. Each of Apex Sweden and Apex Luxembourg own, beneficially and of record, shares which together represent sixty-five percent (65%) of the issued and outstanding share capital of Minera San Cristóbal S.A., a *sociedad anónima* organized under the Laws of Bolivia ("MSC"), with domicile at the city of Potosí, Bolivia, with register of commerce number 13681.

B. Apex Sweden owns, beneficially and of record, one quota representing sixty-five (65%) of the issued and outstanding capital of Apex Metals Marketing GmbH, a *Gesellschaft mit beschränkter Haftung* organized under the laws of Switzerland ("AMM"), with its seat in Zug, Canton of Zug, Switzerland and with a registered address of Bahnhofstrasse 10, 6300 Zug, Switzerland.

C. Apex Sweden is the holder of those certain shareholder loans made to MSC, dated as of the dates, in the original principal amounts and made by the persons specified in Schedule C, of which US\$293,150,378 in aggregate principal amount and US\$22,306,605.09 in accrued interest is outstanding on the date hereof and any shareholder loans made by Apex or its Affiliates following the date hereof (the "Shareholder Loans").

D. Under the 2006 Management Services Agreement, there remain certain Deferred Management Fee Obligations due and owing by MSC to Service Company.

E. Apex and certain Apex Affiliates own the Other MSC Obligations to Apex.

F. ASC Bolivia owns, beneficially and of record, the ASC Bolivia Assets.

G. MSC owns and is operating the San Cristóbal silver, zinc, and lead mine in Bolivia.

H. The Sellers desire to sell to the Purchasers, and the Purchasers desire to purchase from the Sellers, the Purchased Properties, in consideration for, among other things, the Cash Purchase Price.

I. Apex and Service Company intend to file voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Case") in the United States Bankruptcy Court for the Southern District of New York.

J. In connection with the Bankruptcy Case, Apex and Service Company intend to file a joint Chapter 11 plan of reorganization (the "Plan") pursuant to which Apex and Service Company intend to seek Bankruptcy Court approval of this Agreement, the transactions and

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releases contemplated hereunder, and authority to perform all of their obligations under this Agreement and the other Transaction Documents.

K. In connection with the Transactions, Sumitomo shall designate prior to the Closing the SC Designated Purchasers to purchase the Purchased Properties.

L. In connection with their purchase of the Purchased Properties, the Purchasers shall assume certain liabilities of the Sellers.

AGREEMENT

In consideration of the mutual promises, covenants, and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I PURCHASE AND SALE; CLOSING

Section 1.1 Purchase and Sale. On and subject to the terms and conditions of this Agreement, and for the consideration specified in Section 1.2 and for the assumption of the Assumed Liabilities:

(a) MSC Acquired Shares. Sumitomo agrees to cause one or more SC Designated Purchasers to purchase from Apex Sweden and Apex Luxembourg, and Apex Sweden and Apex Luxembourg agree to sell, transfer, assign, convey, and deliver to such SC Designated Purchasers, all their right, title, and interest in and to shares of MSC representing sixty-five (65%) of the issued and outstanding shares of MSC as of the Closing, including any and all present, future and contingent patrimonial rights and obligations related thereto, such as reserves, contributions pending capitalization, global adjustments of equity and the like, with no exception (the "MSC Acquired Shares"), free and clear of all Liens and Restrictions, other than Liens or Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or the Governing Documents of MSC generally on all shares of MSC, (iii) under the MSC Shareholders Agreement or (iv) existing under the Financing Documents;

(b) AMM Acquired Quota. Sumitomo agrees to cause one or more SC Designated Purchasers to purchase from Apex Sweden and Apex Sweden agrees to sell, transfer, assign, convey and deliver to such SC Designated Purchaser(s) all of its right, title and interest in and to one quota of AMM representing sixty-five (65%) of the issued and outstanding capital of AMM (the "AMM Acquired Quota") free and clear of all Liens and Restrictions, other than (i) Liens and Restrictions created by this Agreement, (ii) imposed by Applicable Law or the Governing Documents of AMM generally on all quotas of AMM, (iii) under the AMM Quotaholders Agreement or (iv) existing under the Financing Documents;

(c) Shareholder Loans. Sumitomo agrees to cause one or more SC Designated Purchasers to purchase from Apex Sweden and Apex Sweden agrees to sell, transfer,

assign, convey and deliver to such SC Designated Purchaser(s) all of its right, title and interest in and to the Shareholder Loans free and clear of all Liens and Restrictions, other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or the Governing Documents of MSC generally on all loans from its shareholders, (iii) under the MSC Shareholders Agreement or (iv) existing under the Financing Documents;

(d) Deferred Management Fee Obligations. Sumitomo agrees to cause one or more SC Designated Purchasers to purchase from Service Company and Service Company agrees to sell, transfer, assign, convey and deliver to such SC Designated Purchaser(s) all of its right, title and interest in and to the Deferred Management Fee Obligations free and clear of all Liens and Restrictions other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or (iii) existing under the Financing Documents;

(e) Other MSC Obligations to Apex. Sumitomo agrees to cause one or more SC Designated Purchasers to purchase from Apex and the applicable Apex Affiliates, and Apex agrees, and agrees to cause each of its applicable Apex Affiliates, to sell, transfer, assign, convey and deliver to such SC Designated Purchaser(s) all of its and their respective right, title and interest in and to the Other MSC

Obligations to Apex free and clear of all Liens and Restrictions other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or (iii) existing under the Financing Documents;

(f) ASC Bolivia Assets. Sumitomo agrees to cause one or more SC Designated Purchasers to purchase from ASC Bolivia and ASC Bolivia agrees to sell, transfer, assign, convey to such SC Designated Purchaser(s) all of ASC Bolivia's right, title and interest in and to the ASC Bolivia Assets free and clear of all Liens and Restrictions other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or (iii) existing under the Financing Documents.

(g) Assumed Liabilities. At the Closing, the Sellers shall assign, and one or more SC Designated Purchasers determined and notified to Apex by Sumitomo shall assume, only the Assumed Liabilities set forth on Schedule D (the "Assumed Liabilities"); and

(h) Excluded Liabilities. Except for the Assumed Liabilities, the Purchasers shall not assume and shall not be liable or responsible for any Losses of, or claimed against, the Sellers or any Apex Affiliate (collectively, the "Excluded Liabilities").

Section 1.2 Purchase Price. On the terms and subject to the conditions of this Agreement, at the Closing, as partial consideration for the Purchased Properties, Sumitomo, on behalf of the Purchasers, will pay or cause to be paid to the Sellers an aggregate amount equal to US\$27,500,000.00 (the "Cash Purchase Price") by wire transfer of immediately available US\$ funds to such account or accounts and in such amounts, as Apex has specified in writing to Sumitomo prior to the Closing.

Section 1.3 Intentionally Deleted.

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Section 1.4 Allocation of Cash Purchase Price. As soon as practicable after the Closing, the Purchasers shall provide to the Sellers for the Sellers' review and approval (which approval shall not be unreasonably delayed, conditioned or withheld) a proposed allocation of the Purchase Price among the Purchased Properties for all purposes (including financial accounting and Tax purposes); provided that such allocations are consistent with Law (including financial reporting and Tax Law). The Parties covenant and agree that (a) such allocation will be determined in an arm's length negotiation and none of the Parties shall take a position on any financial statements or Tax Return that is inconsistent with such allocation without the prior written consent of the other Parties or unless specifically required pursuant to a determination by an applicable Tax Authority; (b) they shall cooperate with each other in connection with the preparation, execution, and filing of all Tax Returns related to such allocation; and (c) they shall promptly advise each other in writing regarding the existence of any tax audit, controversy, or litigation related to such allocation.

Section 1.5 Closing. The closing of the Transactions contemplated by this Agreement (the "Closing") shall occur at the offices of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York 10006, at a time and date to be specified by the Parties, which will be no later than the second Business Day after the satisfaction or waiver of the conditions set forth in Section 6.1 and Section 6.2 in accordance with this Agreement, or at such other location, time and date as the Parties agree in writing (the "Closing Date").

Section 1.6 Closing Deliveries.

(a) Apex Closing Deliveries. At the Closing, the Sellers shall deliver (or, as specified herein, shall have made available) to the Purchasers:

(i) (A) two or more original certificates evidencing the MSC Acquired Shares, duly endorsed by Apex Sweden or Apex Luxembourg, as applicable, to the applicable SC Designated Purchasers, together with a copy of the shareholders' register of MSC evidencing that such SC Designated Purchasers have been duly registered and entered therein as holders of the MSC Acquired Shares, certified by the Secretary of the Board of Directors of MSC, (B) a copy of the powers of attorney of the representative of Apex Sweden and Apex Luxembourg with sufficient evidence of authority to sell, transfer and endorse the MSC Acquired Shares; and (C) a certificate issued by the President and Secretary of the Board of Directors of MSC and one of its *Sindicos*, certifying that as of the date of such registration there are no registered liens, pledges, claims by third parties or similar, nor any other restrictions or limitations to transfer of the MSC Acquired Shares other than Liens or Restrictions (A) created by this Agreement, (B) imposed by applicable Law or by the Governing Documents of MSC generally on all shares of MSC, (C) under the MSC Shareholders Agreement or (D) existing under the Financing Documents; in respect of the share certificates of the MSC Acquired Shares referred to above the endorsement must be in form and content reflecting all required formalities in respect of any prior endorsements that will enable the proper registration of the MSC Acquired Shares with the shareholders' register of MSC, including

“endorsements in return”, and new endorsements, including, to the extent applicable, guarantee endorsements pursuant to the Financing Documents as may have been modified and/or having to be properly modified;

(ii) (A) a copy of the quotaholders’ register of AMM evidencing that the applicable SC Designated Purchaser(s) has been entered therein as a holder of the AMM Acquired Quota; (B) an executed copy of the assignment agreement in substantially the form attached hereto as Exhibit B (the Parties hereby agree that such assignment agreement shall only be used for the purposes of registering the SC Designated Purchaser(s) in the commercial register, and the interpretation, rights and obligations of each party to the assignment agreement shall be exclusively governed by this Agreement); and (C) a copy of the quotaholders’ resolution consenting to the sale of the AMM Acquired Quota and confirming its compliance with the terms and conditions of the AMM Quotaholders Agreement;

(iii) appropriate instruments evidencing the transfer to the applicable SC Designated Purchaser(s) of all Shareholder Loans duly endorsed by Apex Sweden, in form and substance reasonably satisfactory to such SC Designated Purchaser(s);

(iv) appropriate instruments evidencing the assignment to the applicable SC Designated Purchaser(s) of the Deferred Management Fee Obligations duly executed by the Service Company, in form and substance reasonably satisfactory to such SC Designated Purchaser(s);

(v) appropriate instruments evidencing the assignment to the applicable SC Designated Purchaser(s) of the Other MSC Obligations to Apex duly executed by Apex and the applicable Apex Affiliates, in form and substance reasonably satisfactory to such SC Designated Purchaser(s);

(vi) counterparts of the termination and releases, in form and substance reasonably satisfactory to the Parties, evidencing the termination of the agreements listed on Schedule E attached hereto (the “Company Agreements”), effective as of the Closing Date.

(vii) the various certificates, instruments, and documents referred to in Section 6.1;

(viii) Intentionally Deleted;

(ix) the Reorganized Apex Parent Guaranty, duly executed by Reorganized Apex;

(x) written letters of resignation and releases from all claims and rights from each Apex appointed or elected director to the Board of Directors of MSC and from each Apex elected sindaco to be effective immediately following the Closing;

(xi) written letters of resignation and releases from all claims and rights from each Apex appointed or elected director or officer or any person holding such equivalent position of AMM to be effective immediately following the Closing;

(xii) written letters of resignation and release addressed to the Board of Directors of MSC from each individual, whether a member of the Board of Directors of MSC or not, who has received upon a decision of the Board of Directors of MSC general management powers of attorney;

(xiii) management powers of attorney of all special powers of attorney for any purposes granted either by resolution of MSC' s board of directors or by delegation or otherwise of any attorney in fact based on the authority granted upon it shall have been made available and, if requested, delivered to the Purchasers' Bolivian counsel;

(xiv) General Assignment and Bill of Sale(s) covering all of the applicable Purchased Properties, substantially in the form attached hereto as Exhibit C;

(xv) instruments evidencing the discharge and release of MSC and AMM, their Affiliates and respective principals, employees, agents, officers, directors, syndicos, shareholders and professionals, of all liability to Reorganized Apex, the Sellers and every Apex Affiliate relating to or arising out of any and all Causes of Action of any nature whatsoever arising prior to the Closing Date or as a result thereof except for the Deferred Management Fee Obligations and Other MSC Obligations to Apex, to the extent such Deferred Management Fee Obligations and Other MSC Obligations to Apex are sold to the Purchasers pursuant to this Agreement, and except for any liabilities under the Transaction Documents;

(xvi) instruments evidencing the discharge and release of the Purchasers and every Sumitomo Affiliate and their respective principals, employees, agents, officers, directors, syndicos, shareholders and professionals, of all liability to the Sellers and every Apex Affiliate relating to or arising out of any and all Causes of Action of any nature whatsoever, arising prior to the Closing Date or as a result thereof except for liabilities arising under this Agreement and the Transaction Documents;

(xvii) a copy of the order entered by the Bankruptcy Court confirming the Plan (the "Confirmation Order"), which Plan and Confirmation Order shall be in form and substance reasonably satisfactory to Sumitomo and shall, among other things, (i) approve this Agreement, the other Transaction Documents and the transactions contemplated hereunder in their entirety, (ii) authorize Apex and Service Company to enter into this Agreement and the other Transaction Documents and perform their obligations thereunder, including the sale of the Purchased Assets free and clear of all Liens, claims and encumbrances in accordance with this Agreement and, where applicable, Section 363(f) of the Bankruptcy Code, and (iii) provide for and approve a

general release by Apex and Service Company, and Apex' s and Service Company' s creditors and interest holders of any Cause of Action, to the fullest extent permitted by applicable law, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the effective date of the Plan against (a) Sumitomo, (b) any of Sumitomo' s current and former directors, officers, employees, agents, members, shareholders and professionals, and (c) with respect to each of the foregoing, their respective Affiliates;

(xviii) Assignment and Assumption Agreement(s), covering all of the Material Contracts and Assumed Liabilities, substantially in the form attached hereto as Exhibit D, duly executed by the relevant Apex Affiliates; and

(xix) such other documents and instruments as Sumitomo has reasonably requested.

(b) Sumitomo Closing Deliveries. At the Closing, the Purchasers shall deliver to the Sellers:

(i) the Cash Purchase Price;

(ii) the Sumitomo guaranty, substantially in the form set forth as Exhibit A to the Management Services Agreement, duly executed by Sumitomo;

(iii) Assignment and Assumption Agreement(s), covering all of the Material Contracts and Assumed Liabilities, substantially in the form attached hereto as Exhibit D, duly executed by the relevant SC Designated Purchasers;

- (iv) counterparts of the termination and releases, in form and substance reasonably satisfactory to Apex, evidencing the termination of the Company Agreements, effective as of the Closing Date;
- (v) the various certificates, instruments, and documents referred to in Section 6.2;
- (vi) instruments evidencing the discharge and release of the Sellers and every Apex Affiliate and their respective principals, employees, agents, officers and directors, syndicos, shareholders and professionals, of all liability to the Purchasers and every Sumitomo Affiliate relating to or arising out of any and all Causes of Action of any nature whatsoever, arising prior to the Closing Date or as a result thereof except for liabilities arising under this Agreement and the Transaction Documents; and
- (vii) such other documents and instruments as Apex has reasonably requested.

ARTICLE II TRANSACTION REPRESENTATIONS AND WARRANTIES

Section 2.1 Apex's Representations and Warranties. The Sellers, jointly and severally, represent and warrant to the Purchasers that the statements contained in this Section 2.1 are true, correct, and complete as of the date of this Agreement and as of the Closing Date (except to the extent any such representation and warranty specifically speaks as of a different date).

- (a) Organization. Apex and each Seller is duly organized, validly existing, and, to the extent applicable in its jurisdiction of organization, in good standing, under the Laws of its jurisdiction of organization.
- (b) Power and Authority. Apex and each Seller has all requisite corporate or other Entity power and authority to enter into, and to perform its obligations under this Agreement and the other Transaction Documents to which it is a party, and the execution and delivery by Apex and each Seller of this Agreement and the other Transaction Documents to which it is a party, and the performance by Apex and such Seller of its obligations under such of this Agreement and the other Transaction Documents to which it is a party, have been duly authorized by all requisite corporate or other Entity action.
- (c) Validity. This Agreement and the other Transaction Documents to which Apex and each Seller is a party have been duly executed and delivered by Apex and/or each Seller which is a party thereto, and assuming the due execution and delivery by the Purchasers, such of this Agreement and the other Transaction Documents to which Apex and each Seller is a party shall constitute Apex's and such Seller's legal, valid, and binding obligation, enforceable against Apex and such Seller in accordance with its terms, except as such enforceability may be affected by applicable bankruptcy, reorganization, insolvency, moratorium, or similar Laws affecting creditors' rights generally.
- (d) Consents. Except as set forth in Section 2.1(d) of the Apex Disclosure Schedule (the "Apex Required Consents"), no Governmental Approval or Authorization is required by or on behalf of Apex or any Seller in connection with the execution, delivery, or performance by Apex or such Seller of this Agreement and the other Transaction Documents to which it is a party or the consummation of the Transactions.
- (e) No Conflicts. The execution and delivery by Apex and each Seller of this Agreement and the other Transaction Documents to which it is a party, and the performance by Apex and each Seller of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not and shall not, (i) violate or conflict with any provision of the Governing Documents of Apex or any Seller; (ii) violate any of the terms, conditions, or provisions of any Law or Government Approval to which Apex or any Seller is subject or by which Apex or any Seller or any of its assets are bound; (iii) assuming the obtaining of all of the Apex Required Consents, result in a violation or breach of, or (with or

without the giving of notice or lapse of time or both) constitute a default (or give rise to any right of termination or cancellation) under, or give rise to or accelerate any material obligation under, or pursuant to, any material Contract to which Apex or any Seller is a party or by which Apex or any Seller or any of its assets are bound; or (iv) result in a Lien or Restriction (other than any Lien or Restriction of the type referred to in Section 2.1(f) through Section 2.1(l)), on any of the Purchased Properties.

(f) Ownership of Shares of MSC. Apex Sweden is the owner, beneficially and of record, of, and has good and valid title to, 14,608,749 registered shares of the issued and outstanding shares of MSC, and Apex Luxembourg is the owner, beneficially and of record, of and has good and valid title to, one registered share of the issued and outstanding shares of MSC, in each case free and clear of all Liens and Restrictions, other than Liens or Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or by the Governing Documents of MSC generally on all shares of MSC, (iii) under the MSC Shareholders Agreement or (iv) existing under the Financing Documents. The MSC Acquired Shares include all voting and dividend rights and interests in respect of capital, and corporate funds and patrimonial rights and account of any kind, purpose, or denomination, such as special or legal reserve, revaluation, patrimonial adjustment, credit, profit, and dividend funds, whether accumulated or not, attributable thereto under applicable Law. There are no voting trusts, proxies, powers of attorney, or other agreements or understandings with respect to the voting of such MSC Acquired Shares, other than under the MSC Shareholders Agreement and the Financing Documents.

(g) Ownership of Quota of AMM. Apex Sweden is the owner, beneficially and of record, of and has good and valid title to, one uncertificated quota representing sixty-five (65%) of the issued and outstanding capital of AMM, with a nominal value of CHF 13,000, that is fully paid up, free and clear of all Liens and Restrictions, other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or the Governing Documents of AMM generally on all quotas of AMM, (iii) under the AMM Quotaholders Agreement or (iv) existing under the Financing Documents. The AMM Acquired Quota includes all voting and dividend rights and interests in respect of capital, and corporate funds of any kind, purpose, or denomination, such as reserve, revaluation, credit, profit, and dividend funds, whether accumulated or not, attributable thereto under applicable Law. There are no voting trusts, proxies, powers of attorney, or other agreements or understandings with respect to the voting of the AMM Acquired Quota, other than under the AMM Quotaholders Agreement and the Financing Documents.

(h) Ownership of Shareholder Loans. Apex Sweden is the holder of, and has good and valid title to, the Shareholder Loans, free and clear of all Liens and Restrictions other than (i) created by this Agreement, (ii) imposed by applicable Law or the Governing Documents of MSC generally on all loans from its shareholders, (iii) under the MSC Shareholders Agreement or (iv) existing under the Financing Documents.

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(i) Ownership of Deferred Management Fee Obligations. Service Company is the owner of, and has good and valid title to, the Deferred Management Fee Obligations free and clear of all Liens and Restrictions, other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or (iii) existing under the Financing Documents.

(j) Ownership of Other MSC Obligations to Apex. Apex and/or those Apex Affiliates listed in Section 2.1(j) of the Apex Disclosure Schedule is or are the owner(s) of, and has or have good and valid title to, the Other MSC Obligations to Apex free and clear of all Liens and Restrictions, other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or (iii) existing under the Financing Documents.

(k) Ownership of ASC Bolivia Assets. ASC Bolivia is the owner of, and has good and valid title to, the ASC Bolivia Assets free and clear of all Liens and Restrictions, other than Liens and Restrictions (i) created by this Agreement, (ii) imposed by applicable Law or (iii) existing under the Financing Documents.

(l) Legal Proceedings. There is no Legal Proceeding pending, or to Apex's knowledge, threatened against Apex or any Seller or any Apex Affiliate that (i) questions the validity of the Transaction Documents or the right of Apex or any Seller or any Apex

Affiliate to enter into the Transaction Documents or to consummate the transactions contemplated thereby, (ii) would, or is reasonably likely to, prevent or materially delay consummation of the transactions contemplated by the Transaction Documents or otherwise prevent the Sellers from performing their obligations under any Transaction Document or (iii) except for the Bankruptcy Case and as disclosed in the periodic reports and filings by Apex with the U.S. Securities and Exchange Commission made on or before the date of this Agreement, if adversely determined, would reasonably be expected to have a Material Adverse Effect on Apex, such Seller or any Apex Affiliate.

(m) Transactions with Affiliates. Except as set forth in Section 2.1(m) of the Apex Disclosure Schedule, neither MSC nor AMM is indebted to Apex or any of the Sellers or any Apex Affiliate, nor is MSC or AMM committed to make loans or extend or guarantee credit to any of the Sellers or any Apex Affiliate. Except as set forth in Section 2.1(m) of the Apex Disclosure Schedule, none of the Sellers nor any Apex Affiliate have any claim or right against MSC or AMM other than the Shareholder Loans, the Deferred Management Fee Obligations and the Other MSC Obligations to Apex, and no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) directly or indirectly give rise to or serve as a basis for any claim or right in favor of Apex, any Seller or any Apex Affiliate against MSC or AMM. Except as set forth in Section 2.1(m) of the Apex Disclosure Schedule, neither MSC nor AMM is a party to any Contract with Apex, any Seller or any Apex Affiliate or has had any direct or indirect interest in, any Contract, transaction or business dealing of any nature involving Apex, any Seller or any Apex Affiliate or received from or furnished to the Sellers or any Apex Affiliate any goods or services (with or without consideration).

(n) Sales Price/Solvency/No Fraudulent Conveyance. The Sellers are not entering into the Transactions or any transactions otherwise contemplated by any of the Transaction Documents with the intent to hinder, delay or defraud any Person to which such Seller is, or may become, indebted. The Purchase Price is not less than the reasonably equivalent value or fair consideration of the Purchased Properties. Each of ASC Bolivia, Apex Luxembourg and Apex Sweden is Solvent and, after giving effect to the transactions contemplated by the Transaction Documents, will remain Solvent. Each of ASC Bolivia, Apex Luxembourg and Apex Sweden is able, and after giving effect to the transactions contemplated by the Transaction Documents will continue to be able, to satisfy its debts as they mature. After giving effect to the transactions contemplated by the Transaction Documents immediately after the Closing, each of ASC Bolivia, Apex Luxembourg and Apex Sweden will have sufficient capital and property remaining to conduct the business it will thereafter be engaged in and to meet its existing obligations with its creditors as they become due.

(o) Brokers' and Finders' Fees. There is no broker, finder, investment banker, or similar intermediary that has been retained by, or is authorized to act on behalf of, the Sellers or any Apex Affiliate or any of their respective officers or directors who shall be entitled to any fee or commission in connection with this Agreement or any other Transaction Document or upon consummation of the transactions contemplated hereby and thereby and which fee or commission would be or become a Loss of the Purchasers, any Sumitomo Affiliate, MSC or AMM.

Section 2.2 Sumitomo's Representations and Warranties. The Purchasers, jointly and severally, represent and warrant to the Sellers that the statements contained in this Section 2.2 are true, correct, and complete as of the date of this Agreement and as of the Closing Date (except to the extent any such representation and warranty specifically speaks as of a different date).

(a) Organization. Each Purchaser is duly organized, validly existing, and, to the extent applicable in its jurisdiction of organization, in good standing, under the Laws of its jurisdiction of organization.

(b) Power, Authority and Validity. Each Purchaser has all requisite corporate or other Entity power and authority to enter into, and to perform its obligations under this Agreement and the other Transaction Documents to which it is a party, and the execution and delivery by each Purchaser of this Agreement and the other Transaction Documents to which it is a party, and the performance by it of its obligations under this Agreement and the other Transaction Documents to which it is a party, have been duly authorized by all requisite corporate or other Entity action.

(c) Validity. This Agreement and the other Transaction Documents have been duly executed and delivered by each Purchaser which is a party thereto, and assuming the due execution and delivery by the Sellers, this Agreement and the other Transaction Documents to which each Purchaser is a party shall constitute such Purchaser's legal, valid, and binding

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obligation, enforceable against it in accordance with its terms, except as such enforceability may be affected by applicable bankruptcy, reorganization, insolvency, moratorium, or similar Laws affecting creditors' rights generally.

(d) Consents. Except as set forth in Section 2.2(d) of the Sumitomo Disclosure Schedule (the "Sumitomo Required Consents"), no Governmental Approval or Authorization is required, on behalf of any Purchaser in connection with the execution, delivery, or performance by such Purchaser of this Agreement and the Transaction Documents to which it is a party or the consummation of the Transactions.

(e) No Conflicts. The execution and delivery by each Purchaser of this Agreement and the other Transaction Documents to which it is a party, and the performance by each Purchaser of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not and shall not, (i) violate or conflict with any provision of its Governing Documents; (ii) violate any of the terms, conditions, or provisions of any Law or Government Approval to which it is subject or by which it or any of its assets is bound; or (iii) assuming the obtaining of all Sumitomo Required Consents, result in a violation or breach of, or (with or without the giving of notice or lapse of time or both) constitute a default (or give rise to any right of termination or cancellation) under, or give rise to or accelerate any material obligation under, or pursuant to, any material Contract to which it is a party or by which it or any of its assets are bound.

(f) Legal Proceedings. There is no Legal Proceeding pending or, to the Purchasers' knowledge, threatened against any Purchaser or any Sumitomo Affiliate that (i) questions the validity of the Transaction Documents or the right of any Purchaser or any Sumitomo Affiliate to enter into the Transaction Documents or to consummate the transactions contemplated thereby, (ii) that would, or is reasonably likely to, prevent or materially delay consummation of the transactions contemplated by the Transaction Documents or otherwise prevent the Purchasers from performing their obligations under any Transaction Document, or (iii) if adversely determined would reasonably be expected to have a Material Adverse Effect on any Purchaser.

(g) No External Financing. Sumitomo does not require any third-party financing to complete the Transactions, including the payment of the Cash Purchase Price to the Sellers, or perform or cause any Purchaser to perform its obligations under the Transaction Documents.

(h) Brokers' and Finders' Fees. There is no broker, finder, investment bank or similar intermediary that has been retained by, or is authorized to act on behalf of, the Purchasers or any Sumitomo Affiliate or any of their respective officers or directors who shall be entitled to any fee or commission in connection with this Agreement or any other Transaction Document or upon consummation of the transactions contemplated thereby and which fee or commission could become a Loss of the Sellers or any Apex Affiliate

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(i) No Knowledge of Breach of Apex or Seller Representations and Warranties. As of the date of this Agreement, the Purchasers are not aware of any facts or circumstances that would serve as the basis for a claim by a Purchaser against Apex or any Seller based upon a breach of any of the representations and warranties of Apex or any Seller contained in this Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES
REGARDING MSC AND THE PURCHASED PROPERTIES

The Sellers, jointly and severally, represent and warrant to the Purchasers that the statements contained in this Article III are true, correct, and complete as of the date of this Agreement and as of the Closing Date (except to the extent any such representation and warranty specifically speaks as of a different date).

Section 3.1 Organization, Good Standing, Authority, Governing Documents, Books and Records.

(a) MSC (i) is duly organized, validly existing, and, to the extent applicable under the Laws of Bolivia, in good standing as a *sociedad anónima* under the Laws of Bolivia, (ii) has all requisite corporate or other Entity power and authority to own its properties and to carry on its business as now being conducted, including to operate the Project as contemplated in the Current Operating Plan, and (iii) is duly qualified and in good standing to do business in each jurisdiction where necessary in light of the business it conducts and the property it owns except where the failure to be so qualified and in good standing would not reasonably be expected to have a Material Adverse Effect on MSC.

(b) The share capital of MSC is Bs.2,247,500,000, divided into 22,475,000 registered shares, all in a single series, with no preference, all of which are issued and outstanding. The issued and outstanding shares of MSC are set forth on Section 3.1(b) of the Apex Disclosure Schedule, and the information set forth therein is true, correct and complete. All such issued and outstanding shares are duly authorized, validly issued, fully paid and nonassessable, and not issued in violation of any Preemptive Rights. Except as provided in the MSC Shareholder' s Agreement, the Working Capital Loan Agreement or the Governing Documents of MSC, and except as may have been created by the Purchasers, there are no other issued or outstanding share capital, subscriptions, options, warrants, puts, calls, trusts (voting or otherwise), rights, exchangeable or convertible securities, or other commitments or agreements of any nature relating to the share capital or other securities of or ownership interests in MSC or obligating MSC, at any time or upon the happening of any event, to issue, transfer, deliver, sell, repurchase, redeem, or otherwise acquire, or cause to be issued, transferred, delivered, sold, repurchased, redeemed, or otherwise acquired, any of its share capital, other securities, or ownership interests or any phantom shares, phantom equity interests, or stock or equity appreciation rights, or other ownership interests in MSC or obligating MSC to grant, extend, or

enter into any such subscription, option, warrant, put, call, trust, right, exchangeable or convertible security, commitment or agreement.

(c) AMM (i) is duly organized, validly existing, and, to the extent applicable under the Laws of its jurisdiction of organization, in good standing under the Laws of its jurisdiction of organization, (ii) has all requisite corporate or other Entity power and authority to own its properties and to carry on its business as then being conducted, and (iii) is duly qualified and in good standing to do business in each jurisdiction where necessary in light of the business it conducts and the property it owns, except where the failure to be so qualified and in good standing would not reasonably be expected to have a Material Adverse Effect on AMM.

(d) The share capital of AMM is CHF 20,000, divided into one quota of a par value of CHF 7,000, and into the AMM Acquired Quota of a par value of CHF 13,000. The issued and outstanding quotas of AMM are as set forth on Section 3.1(d) of the Apex Disclosure Schedule and the information set forth therein is true, correct, and complete. Such issued and outstanding quotas are duly authorized, validly issued, fully paid, and nonassessable, and not issued in violation of any Preemptive Rights; and except as provided in the AMM Quotaholders Agreement and the Financing Documents, there are no other issued or outstanding capital, subscriptions, options, warrants, puts, calls, trusts (voting or otherwise), rights, exchangeable or convertible securities, or other commitments or agreements of any nature relating to the capital or other securities of or ownership interests in AMM or obligating AMM, at any time or upon the happening of any event, to issue, transfer, deliver, sell, repurchase, redeem, or otherwise acquire, or cause to be issued, transferred, delivered, sold, repurchased, redeemed, or otherwise acquired, any of its capital, other securities, or ownership interests or any phantom shares, phantom equity interests, or stock or equity appreciation rights, or other ownership interests in AMM or obligating AMM to grant, extend, or enter into any such subscription, option, warrant, put, call, trust, right, exchangeable or convertible security, commitment, or agreement.

(e) Apex has made available to Sumitomo true, correct, and complete copies of (i) the Governing Documents of MSC and AMM including all amendments thereto, as presently in effect and (ii) all share or equity interest records of MSC and AMM, including MSC' s and AMM' s share ledger and copies of any share or quota certificates (front and back) issued by MSC and AMM. Since September 25, 2006, there have been no meetings or other formal proceedings or actions taken by written consent or otherwise without a meeting of (A) the shareholders of MSC and quotaholders of AMM, (B) the boards of directors of MSC and AMM, and (C) all committees of such board of directors or management boards, in which a Sumitomo Representative did not participate.

Section 3.2 No Conflicts. Except as set forth in Section 3.2 of the Apex Disclosure Schedule, the execution and delivery by the Sellers of this Agreement and the other Transaction Documents to which it is a party, and the performance by the Sellers of their obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not and shall not, assuming the obtaining of all of the Apex Required Consents, result in a violation or breach of, or (with or without the giving of notice or lapse of time or both)

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constitute a default (or give rise to any right of termination or cancellation) under, or give rise to or accelerate any material obligation under, or pursuant to, any material Contract to which AMM or MSC is a party or by which AMM or MSC or any of its assets are bound.

Section 3.3 Consents and Approvals for the Project.

(a) All material (i) Government Approvals, (ii) Authorizations, (iii) Mining Concessions, (iv) Other Property Rights, and (v) Intellectual Property Rights, necessary in each case for the operation of the Project in accordance with the Current Operating Plan and for the conduct of AMM' s business as presently conducted are set forth in Section 3.3(a) of the Apex Disclosure Schedule.

(b) To the knowledge of Apex, each of the (i) Government Approvals, (ii) Authorizations, (iii) Mining Concessions, (iv) Other Property Rights, and (v) Intellectual Property Rights set forth in Section 3.3(a) of the Apex Disclosure Schedule has been obtained and is in full force and effect, except to the extent the failure to so obtain or be in full force and effect would not reasonably be expected to result in a Material Adverse Effect on MSC or AMM. To the knowledge of Apex, such Government Approvals, Authorizations, Mining Concessions, Other Property Rights, and Intellectual Property Rights are sufficient to permit the operation of the Project in all material respects as contemplated by the Current Operating Plan and to permit the conduct of AMM' s business as presently conducted.

(c) Each of MSC and AMM is in compliance, as applicable, (A) in all respects with all terms and conditions of all of the Mining Concessions and (B) in all respects, with all terms and conditions of all of such Government Approvals, Authorizations, Other Property Rights, and Intellectual Property Rights listed in Section 3.3(a) of the Apex Disclosure Schedule, except to the extent the failure to be in compliance would not reasonably be expected to result in a Material Adverse Effect on it.

Section 3.4 Subsidiaries. Neither MSC nor AMM has any Subsidiaries nor does it own, otherwise Control or have any right to acquire, directly or indirectly, any capital stock of, or other equity interests in, any Entity.

Section 3.5 Financial Statements; No Undisclosed Liabilities; No Material Adverse Effect.

(a) Apex has made available to Sumitomo (i) the audited separate balance sheets (the "Audited MSC Balance Sheets") of MSC as of September 30, 2005, 2006 and 2007, (ii) the audited separate balance sheet of AMM as of September 30, 2007 (the "Audited AMM Balance Sheets"), (iii) the audited separate statements of income and cash flows of MSC for its fiscal years ended on September 30, 2005, 2006 and 2007, (iv) the audited separate statements of income and cash flows of AMM for its fiscal year ended on September 30, 2007, (v) the unaudited balance sheets of MSC as of September 30, 2008, (vi) the unaudited balance sheets of AMM as of September 30, 2008, (vii) the unaudited separate statements of income and cash

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flows of MSC for the twelve months ended on September 30, 2008, and (viii) the unaudited separate statements of income and cash flow of AMM for the 12 months ended on September 30, 2008 (the foregoing financial statements, collectively, the “Financial Statements,” true, correct, and complete copies of all of which are included as Section 3.5(a) of the Apex Disclosure Bundle).

(b) Except (i) as set forth in Section 3.5(b) of the Apex Disclosure Schedule, (ii) as described in the notes to the Financial Statements that are audited, (iii) to the extent that the unaudited interim statements do not include footnotes and other presentation items as required by GAAP, and (iv) in the case of the unaudited statements, for normal, year-end adjustments (which shall not be material individually or in the aggregate), the Financial Statements have been prepared in accordance with GAAP as well as, with respect to AMM, in accordance with applicable provisions of Swiss law, applied on a consistent basis and fairly present in all material respects the separate financial condition and results of operations and cash flows of MSC and AMM, as applicable, as of the respective dates thereof and for the respective periods indicated therein.

(c) Except for (i) any liabilities set forth in Section 3.5(c) of the Apex Disclosure Schedule, (ii) liabilities set forth or provided for on the Financial Statements (including liabilities the amounts of which are set forth numerically in the notes thereto), (iii) liabilities that have arisen after September 30, 2008, in the ordinary course of business consistent with past practice, (iv) liabilities under the Financing Documents to which MSC or AMM is a party or the Scheduled Contracts and the AMM Contracts, to the extent that the existence of such liabilities is reasonably ascertainable solely by reference to such Financing Documents or Scheduled Contracts and the AMM Contracts and (v) liabilities that have not had or would not reasonably be expected to have, individually or together with other liabilities, a Material Adverse Effect on MSC or AMM, neither MSC nor AMM has any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for Taxes), except that no representation is made with respect to any liability for Bolivian taxes or CEDEIMs that may result from any audit by Bolivian tax authorities or from challenges to claims made by MSC for refunds of value added taxes or receivables for CEDEIMs.

Section 3.6 Title to Properties; Sufficiency of Assets.

(a) (i) Except as provided in the legal opinions included in Section 3.6(a) of the Apex Disclosure Bundle and except with respect to the Transmission Line, each of MSC and AMM has good, legal, and valid title to (or, in the case of any leased premises, easement properties or licensed property, valid leasehold, easement, or license interests in) all real and personal property and all rights, tangible or intangible (including Intellectual Property Rights and Other Property Rights), now required, in MSC’ s case, for the operation of the Project substantially as contemplated by the Current Operating Plan and, in AMM’ s case, for the conduct of its business as presently conducted, and (ii) there are no Liens of any nature against

such properties or rights (other than (A) Permitted Liens and (B) such Liens as are set forth in Section 3.6 of the Apex Disclosure Schedule), in each case, except where such failure of title or the existence of such Liens would not reasonably be expected to have a Material Adverse Effect on MSC or AMM.

(b) Except as the Parties may agree pursuant to Section 5.11, none of the assets that the Sellers or any other Apex Affiliate shall continue to own immediately after the Transactions is material to the operation of the Project in accordance with the Current Operating Plan or the conduct of AMM’ s business as currently conducted.

Section 3.7 Material Contracts.

(a) All Contracts to which MSC is a party or by which its assets are bound as of the date hereof that have a term of at least one year, have payments due to or from MSC thereunder in excess of US\$10,000,000 and are not terminable by MSC by notice of not more than thirty (30) days at no cost to MSC are listed on Section 3.7(a) of the Apex Disclosure Schedule (the “Scheduled Contracts”).

(b) Except as set forth in Section 3.7(b) of the Apex Disclosure Schedule, none of the Scheduled Contracts have pursuant to a writing been amended, modified, or supplemented, and all of the Scheduled Contracts are in full force and effect in all material respects and are enforceable by MSC in accordance with their respective terms, except as such enforceability may be affected by applicable bankruptcy, reorganization, restructuring, insolvency, moratorium, or similar Laws affecting creditors' rights generally, and have not been terminated, suspended, or rescinded by any party thereto.

(c) All (i) Third Party Concentrate Sales Agreements to which AMM is a party and (ii) all other Contracts to which AMM is a party or by which its assets are bound as of the date hereof which, in the case of such other Contracts have a term of at least one year, have payments due to or from AMM thereunder in excess of US\$10,000,000 and are not terminable by AMM by notice of not more than thirty (30) days at no cost to AMM are listed on Section 3.7(c) of the Apex Disclosure Schedule (the "AMM Contracts").

(d) Except as set forth on Section 3.7(d) of the Apex Disclosure Schedule, none of the AMM Contracts have pursuant to a writing been amended, modified, or supplemented, and all of the AMM Contracts are in full force and effect in all material respects and are enforceable by AMM in accordance with their respective terms, except as such enforceability may be affected by applicable bankruptcy, reorganization, restructuring, insolvency, moratorium, or similar Laws affecting creditors' rights generally, and have not been terminated, suspended, or rescinded by any party thereto.

(e) None of the Contracts included in the ASC Bolivia Assets (the "ASC Contracts"), including any Transmission Line Loan Document, have pursuant to a writing been amended, modified, or supplemented, and all of the ASC Contracts are in full force and effect in

all material respects and are enforceable by ASC Bolivia in accordance with their respective terms, except as such enforceability may be affected by applicable bankruptcy, reorganization, restructuring, insolvency, moratorium, or similar Laws affecting creditors' rights generally, and have not been terminated, suspended, or rescinded by any party thereto.

(f) Except as set forth in Section 3.7(f) of the Apex Disclosure Schedule or as would not reasonably be expected to have a Material Adverse Effect on MSC or AMM, neither Apex nor any Apex Affiliate is in default in the performance of any covenant or obligation set forth in, or otherwise in default under, any of the Scheduled Contracts or AMM Contracts to which it is a party. To the knowledge of Apex, no counterparty is in material default in the performance of any covenant or obligation set forth in, or otherwise in material default under, any of the Scheduled Contracts or AMM Contracts to which it is a party.

(g) The Apex Disclosure Bundle includes true, correct, and complete copies of the Scheduled Contracts, the AMM Contracts and the ASC Contracts and of any material amendments to any of the foregoing.

(h) The Apex Disclosure Bundle includes true, correct, and complete copies of all written Contracts pursuant to which MSC and/or Apex or any Apex Affiliate have material commitments and undertakings with all local and regional governments and indigenous people, communities, and other social, civic or civil Persons.

Section 3.8 Employees; Employee Benefits.

(a) Section 3.8(a) of the Apex Disclosure Schedule contains a true, correct, and complete list of all employment or employment-related or consulting Contracts to which MSC or AMM is a party with any current executive officer, director, key employee or key consultant of MSC or AMM that are currently in effect. Except as set forth in Section 3.8(a) of the Apex Disclosure Schedule, to the knowledge of Apex, no executive officer, key employee, or significant group of employees of MSC or AMM presently plans to terminate employment with MSC or AMM during the next 6 months.

(b) There are no collective bargaining agreements relating to or affecting MSC or AMM or by which MSC or AMM or their respective assets is bound. Except as set forth in Section 3.8(b) of the Apex Disclosure Schedule and except for such exceptions as have not had, and would not reasonably be expected to have, a Material Adverse Effect on MSC or AMM, (i) there is not occurring and, to the knowledge of Apex, there has not been threatened, any strike, slow-down, picket, work stoppage, or other concerted action by any union or other group of employees or other Persons against MSC or AMM or their respective premises or products; (ii) there are no complaints or grievances against MSC or AMM known to Apex, by any union, other group, or class of employees or other Persons which are unsettled or unresolved; and (iii) to the knowledge of Apex, no other union or labor organization has attempted to organize any of the employees of MSC or AMM.

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(c) Except as set forth in Section 3.8(c) of the Apex Disclosure Schedule and subject to the exception set forth in Section 3.5(c) with respect to CEDEIMs, none of MSC, AMM or any ERISA Affiliate of MSC or AMM has incurred or reasonably expects to incur any material liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due) with respect to any Employee Benefit Plan that would reasonably be expected have a Material Adverse Effect on MSC, AMM or the Project.

Section 3.9 Legal Compliance. From September 25, 2006, to the knowledge of Apex, except as set forth in Section 3.9 of the Apex Disclosure Schedule or as contemplated in Section 3.10 below, (a) each of MSC and AMM is in compliance with, and has conducted its business, including with respect to the Project, so as to comply with, the terms of all Government Approvals and Laws applicable to it, including applicable anti-corruption Laws in force in Bolivia and Switzerland, and (b) neither MSC nor AMM has any Legal Proceeding, claim, demand (other than periodic labor demands and shutdowns), or notice filed or commenced against it alleging any failure to so comply, in each case except where the failure to so comply or to have such Government Approvals has not had, or would not reasonably be expected to have, a Material Adverse Effect on MSC or AMM.

Section 3.10 Taxes.

(a) Each of MSC and AMM has timely filed or caused to be filed all material Tax Returns required to have been filed by it. To the knowledge of Apex, all such Tax Returns were correct and complete in all material respects. All Taxes owed by either MSC or AMM (whether or not shown on any Tax Return) have been paid, except (i) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which MSC or AMM, as applicable, has set aside on its books adequate reserves (as determined by GAAP), (ii) as set forth in Section 3.10 of the Apex Disclosure Schedule or (iii) to the extent that the failure to do so has not had, and would not have, a Material Adverse Effect on it;

(b) there are no material disputes pending or, to the knowledge of the Sellers, threatened, between MSC or AMM and any Tax Authority relating to Taxes; and

(c) each of MSC and AMM has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

provided, that with respect to the representations in this Section 3.10, all such actions taken by the Sellers have been in accordance with the Sellers' reasonable interpretation of relevant Tax Law.

The Sellers have made available to the Purchasers correct and complete copies of all Tax Returns since and including 2004, examination reports, and any statements of deficiencies assessed against or agreed to by MSC or AMM.

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Section 3.11 Legal Proceedings. Except as set forth in Section 3.11 of the Apex Disclosure Schedule, as the same may be updated at the Closing, there is no Legal Proceeding pending or, to the knowledge of Apex, threatened in writing relating to MSC or AMM, which has had, or would reasonably be expected to have, a Material Adverse Effect on MSC or AMM. Neither MSC nor AMM is subject to any Judgment, which has had, or would reasonably be expected to have, a Material Adverse Effect on it.

Section 3.12 Environmental Matters.

(a) Except as otherwise would not reasonably be expected to have a Material Adverse Effect on MSC or AMM, the operation of the Project and the activities and properties of MSC and AMM are in compliance in all respects with (i) the Environmental Guidelines, (ii) all applicable Environmental Laws, and (iii) all environmental Government Approvals. MSC has designed the Project in compliance in all material respects with the Environmental Guidelines.

(b) Except as otherwise would not reasonably be expected to have a Material Adverse Effect on MSC or AMM, no notice, notification, demand, citation, summons, or order has been issued and delivered to MSC or AMM, no written complaints have been filed and notice thereof served on MSC or AMM, no penalty has been assessed, and, to the knowledge of Apex, no investigation or review is pending or threatened by any Governmental Authority or other Person with respect to any alleged failure by MSC or AMM to have any material environmental Government Approval or to comply with any applicable Environmental Law.

Section 3.13 Interested Party Transactions. Other than transactions required or permitted by this Agreement or the other Transaction Documents, Section 3.13 of the Apex Disclosure Schedule lists all transactions and Contracts between Apex or any of its Affiliates (other than MSC or AMM), on the one hand, and MSC or AMM on the other hand, in each case that involves consideration of US\$500,000 or more and that has not yet been fully performed.

Section 3.14 Insurance. Each of MSC and AMM maintains with financially sound and reputable insurers, insurance with respect to its properties and business against such casualties and contingencies and in such amounts as are usually carried by businesses engaged in similar activities as MSC and AMM, as applicable, and located in similar geographic areas in which MSC and AMM, as applicable, operates.

Section 3.15 Credit Support. Section 3.15 of the Apex Disclosure Schedule sets forth a correct and complete list of all Contracts (except Scheduled Contracts, the AMM Contracts and the Financing Documents) pursuant to which Apex or any Apex Affiliate is required to provide credit support in respect of the Project or to MSC or AMM. True, correct, and complete copies of all such Contracts, including all amendments, supplements, modifications, and waivers thereof, are included as Section 3.15 of the Apex Disclosure Bundle.

Section 3.16 Performance Security. There are no letters of credit, performance bonds, or other types of performance security currently required to be posted and in full force and effect

under the Scheduled Contracts, the AMM Contracts or the ASC Contracts, other than those listed on Section 3.16 of the Apex Disclosure Schedule (the “Performance Security”). No drawing has been made under any of the Performance Security and, to the knowledge of Apex, no event has occurred and currently exists that gives or reasonably could be expected to give any beneficiary of a Performance Security the right to draw thereunder.

Section 3.17 No Liquidation; Intent. Neither MSC nor AMM has commenced any voluntary Insolvency Proceeding or filed any related petition, there is no commencement of any involuntary Insolvency Proceeding against MSC and, to the knowledge of Apex, there is no involuntary Insolvency Proceeding against AMM, seeking (a) liquidation, reorganization, restructuring, or other relief in respect of MSC or AMM, as the case may be, for its debts, or any substantial part of its assets, under any applicable Law or (b) appointment of a receiver, trustee, sindico, custodian, sequestrator, conservator, or similar official for MSC or AMM, as the case may be, or for a substantial part of its assets.

Section 3.18 Project Information and Other Information Furnished. The information, financial statements, exhibits, and schedules furnished in writing by or on behalf of Apex to Sumitomo in connection with the negotiation, preparation, or delivery of this Agreement or included herein or delivered pursuant hereto (including the documents included in the Apex Disclosure Bundle), considered together, do not contain any material misrepresentation or misstatement (or omit any material fact or circumstance necessary in order to make the information contained therein not misleading); provided, that the only representations and warranties made by Apex to Sumitomo under this Section 3.18 in respect of projections, estimates, or other expressions of view as to future circumstances included in the Apex Disclosure Bundle or such other information, financial statements, exhibits, and schedules is that such projections, estimates, or other expression of view were prepared in good faith and were based on reasonable assumptions as to all factual and legal matters materially related thereto as of their respective preparation dates.

ARTICLE IV PRE-CLOSING COVENANTS

Section 4.1 Commencement of Bankruptcy.

(a) In order to implement the Transactions, Apex and Service Company shall (i) execute and deliver the Plan Support Agreement, and use commercially reasonable efforts to obtain execution and delivery of the Plan Support Agreement by holders of no less than (A) fifty percent (50%) in amount of the Apex Convertible Senior Subordinated Notes (the "Required Noteholders"), or (B) ninety-seven percent (97%) in amount and number of the Existing Debt (the "Required Lenders"); (ii) prepare the Plan consistent in all material respects with the Plan Support Agreement and a supporting disclosure statement (the "Disclosure Statement"), with each of the Plan and Disclosure Statement in form and substance reasonably satisfactory to Sumitomo; and (iii) file a voluntary petition (the "Petition") for relief under Chapter 11 of Title

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11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") in the Bankruptcy Court. The Petition shall be filed on or before January 12, 2009.

(b) Within three (3) Business Days of the Petition Date, Apex and Service Company shall file with the Bankruptcy Court in the Bankruptcy Case a motion (the "Fee Approval Motion"), in form and substance reasonably satisfactory to Sumitomo, with such motion to be heard on an expedited basis, by which Apex and Service Company will seek, among other forms of relief, an order of the Bankruptcy Court authorizing Apex to (i) pay of a fee in the amount of US\$16,000,000 (the "Break-Up Fee") to Sumitomo in accordance with the terms and conditions of Section 8.3, and (ii) reimburse Sumitomo and its Affiliates for their documented reasonable out-of-pocket expenses relating to the Transaction, including reasonable professional fees and expenses, in an amount not to exceed US\$2,000,000 (the "Reimbursement Amount"), in accordance with the terms and conditions of Section 8.3. The Fee Approval Motion shall request that the Break-Up Fee and Reimbursement Amount shall be deemed to be administrative expenses of Apex' s and Service Company' s bankruptcy estates under Sections 503(b) and 507(b) of the Bankruptcy Code, to be paid in accordance with Section 8.3 without further application, motion or order of the Bankruptcy Court.

(c) Within three (3) Business Days of the Petition Date, Apex and Service Company shall file with the Bankruptcy Court in the Bankruptcy Case a motion (the "Support Motion"), in form and substance reasonably satisfactory to Sumitomo, with such motion to be heard on an expedited basis, by which Apex and Service Company will seek an order of the Bankruptcy Court authorizing Apex, in its discretion, to advance or otherwise furnish Apex Luxembourg, Apex Sweden and ASC Bolivia with the financial support necessary for each of them to pay their debts when and as due, meet their ordinary course obligations pending the Closing Date and otherwise maintain their solvency, which support shall in no event be greater than US\$500,000.

(d) Within three (3) Business Days of the Petition Date, Apex shall file with the Bankruptcy Court, the Plan and a motion (the "Scheduling Motion") requesting that the Bankruptcy Court schedule (i) a hearing on or before February 9, 2009 to consider the adequacy of the Disclosure Statement and approval of the procedures to solicit acceptances of the Plan; provided, however, that the Disclosure Statement shall be filed with the Bankruptcy Court on or before January 20, 2009, and (ii) a hearing on or before March 16, 2009 to consider

confirmation of the Plan and entry of the Confirmation Order on the date of such hearing, which Plan and Scheduling Motion shall each be in form and substance reasonably satisfactory to Sumitomo.

(e) In support of the Scheduling Motion, Apex shall file pleadings and supporting declarations or affidavits describing (i) the marketing process initiated and implemented by Apex and its Advisors to either raise additional debt or equity for Apex or sell the Purchased Properties to a third party, (ii) the arms' length negotiations between the Sellers and the Purchasers and (iii) that Sumitomo's offer was the highest and best offer received by Apex.

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(f) The Confirmation Order proposed by Apex and filed with the Bankruptcy Court shall, in addition to the provisions outlined in Section 1.6(a)(xvii), (i) include a waiver of the stay set forth in Federal Rule of Bankruptcy Procedure 3020(e) (the "Bankruptcy Rules"); (ii) provide that neither Sumitomo nor any other Purchaser shall be subject to any successor liability and shall have no Losses or suffer any Losses for any Liens (other than Permitted Liens) existing prior to the Closing Date which may be asserted against Apex, Service Company, Reorganized Apex, the MSC Acquired Shares, the AMM Acquired Quota or other Purchased Properties or Apex's bankruptcy estate, including any claims against any Purchaser as successor to the MSC Acquired Shares, the AMM Acquired Quota or other Purchased Properties; (iii) provide for the retention of jurisdiction by the Bankruptcy Court to resolve any and all disputes that may arise under or relate to this Agreement or the Confirmation Order, whether between Apex or Service Company and Sumitomo or involving a Person in interest in the Bankruptcy Case; and (iv) contain findings of fact and conclusions of law which include the following: (A) the transactions under this Agreement were negotiated and entered into in good faith and at arms-length; (B) the marketing and sale process conducted by Apex were bona fide and adequate; (C) Apex and Service Company gave due and proper notice and an opportunity to be heard to all interested parties, of this Agreement and the transactions contemplated hereby; (D) the consideration to be paid by the Purchasers under this Agreement constitutes "reasonably equivalent value" and "fair consideration" (as such terms are used in each of the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of the Bankruptcy Code) and fair consideration for the Purchased Properties; and (E) neither Sumitomo nor any other Purchaser nor Apex nor any other Seller is entering into the transactions contemplated by this Agreement fraudulently.

(g) The Plan and Confirmation Order shall authorize (i) Apex to assign to Reorganized Apex all of its right title and interest in this Agreement and (ii) Reorganized Apex to assume all of Apex's obligations under this Agreement. Reorganized Apex shall execute an assignment agreement in form and substance reasonably acceptable to Sumitomo, evidencing the assignment of this Agreement to Reorganized Apex.

(h) In the event an appeal is taken, or a stay pending appeal is requested or reconsideration is sought, from the Confirmation Order, Apex shall immediately notify Sumitomo of such appeal or stay request and shall provide to Sumitomo within one (1) Business Day a copy of the related notice of appeal or order of stay or application for reconsideration. Apex shall also provide Sumitomo with written notice (and copies) of, any other or further notice of appeal, motion or application filed in connection with any appeal from or application for reconsideration of, either of such orders and any related briefs.

(i) Apex shall promptly notify Sumitomo in writing and, as is required by the Bankruptcy Code, all parties entitled to notice pursuant to the Bankruptcy Code, the Bankruptcy Rules and orders of the Bankruptcy Court, of all motions, notices and orders required to consummate the Transactions contemplated by this Agreement (including any appeals of such orders), as modified by orders in respect of notice which may be issued at any time and from time to time by the Bankruptcy Court.

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Section 4.2 Plan Support Agreement. Prior to the filing of the Petition, the Parties will use commercially reasonable efforts to obtain the execution and delivery by the Required Noteholders or the Required Lenders of an agreement (the "Plan Support Agreement"), that would among other things (i) result in the releases of Apex, Apex Affiliates, Sumitomo and Sumitomo Affiliates described in Sections 1.6(a)(xv), 1.6(a)(xvi), 1.6(a)(xvii) and 1.6(b)(vi), (ii) commit the signatories to support the Transactions and the Plan, and (iii) require that if

any signatory sells, assigns or otherwise conveys any of its claims against Apex, it will, as a condition of such transfer, require the transferee to agree and become a party to the Plan Support Agreement.

Section 4.3 SC Designated Purchasers. As promptly after the date of this Agreement as practical, Sumitomo or its Representatives shall provide written notice to Apex setting forth the SC Designated Purchasers and the Purchased Properties each such SC Designated Purchaser will be acquiring.

ARTICLE V OTHER COVENANTS

Section 5.1 Conduct of Business Pending the Closing. (a) Between the date of this Agreement and the Closing Date, unless Sumitomo shall otherwise agree in writing, (i) Apex shall cause MSC and AMM to conduct their respective businesses in the ordinary course of business and in a manner consistent with past practice and in compliance in all material respects with all applicable Laws; (ii) Apex shall, subject to cooperation by Sumitomo, use its commercially reasonable efforts, and shall be free to use debtor in possession funds provided by Sumitomo, to preserve substantially intact the business organization of MSC and AMM, to keep available the services of the current officers, directors and key employees of MSC and AMM and, except for determinations made in the ordinary course of business, to preserve the current material relationships of MSC and AMM with customers, suppliers, distributors, licensors, licensees and other Persons with which any of MSC or AMM has business relations; (iii) Apex shall not, and shall cause MSC and AMM not to, take any action which would adversely affect or delay in any material respect the ability of any Party or MSC or AMM to obtain or make any necessary Governmental Approval or Authorization required for the transactions contemplated hereby or under any of the other Transaction Documents; and (iv) Apex shall cause MSC and AMM to prepare and timely file all Tax Returns required to be filed by them on or before the Closing Date (“Post-Signing Returns”) in a manner consistent with past practice, except as otherwise required by applicable Laws, and, subject to the availability of funds at MSC or AMM as applicable (and Apex shall be free to use debtor in possession funds provided by Sumitomo for these purposes) shall cause MSC and AMM to fully and timely pay all Taxes due and payable pursuant to such Post-Signing Returns that are so filed; provided, however, that in each case, Apex shall only be responsible to provide funding for sixty-five percent (65%) of the funds required by MSC and AMM to comply with the provisions of this Section 5.1.

By way of amplification and not limitation, between the date of this Agreement and the Closing Date, Apex shall cause each of MSC and AMM not to directly or indirectly, do, or propose to do, any of the following without the prior written consent of Sumitomo:

- (A) amend or otherwise change its Governing Documents;
- (B) issue, sell, pledge, dispose of, grant, encumber, or authorize the issuance, sale, pledge, disposition, grant or encumbrance of, any shares of any class of its capital stock, any quotas, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock or quotas, or any other ownership interest (including any phantom interest);
- (C) transfer, lease, sell, pledge, license, dispose of or encumber any of its assets or properties, except in the ordinary course of business and in a manner consistent with past practice;
- (D) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock or quotas;
- (E) reclassify, combine, split, subdivide or redeem, or purchase or otherwise acquire, directly or indirectly, any of its capital stock or quotas;
- (F) (i) acquire (including by merger, consolidation, or acquisition of stock or assets or any other business combination) any corporation, partnership, other business organization or any division thereof, or any equity interest in any Person; (ii) acquire any material amount of assets, except in the ordinary course of business and consistent with past practice; (iii) incur any indebtedness for borrowed money or issue any debt securities, or assume, guarantee or endorse, or otherwise become responsible for (contingently or otherwise), the obligations of any Person; (iv) make any loans, advances or capital contributions; or (v) enter into or amend any contract, agreement, commitment or arrangement with respect to any matter set forth in this Section 5.1(a)(F);
- (G) except as may be required by Bolivian Law, (i) increase the compensation payable or to become payable (including bonus grants) or increase or accelerate the vesting of the benefits provided to its directors, officers or employees or other service providers, except for increases in the ordinary course of business and consistent with past practice in salaries or wages of employees other than the VPGM and Senior Management (as defined in the Management Services Agreement), (ii) grant any severance or termination pay or benefits, except in the ordinary course of business and consistent with past practice, to employees other than the VPGM and Senior Management, (iii) enter into any employment, severance, retention, change in control, consulting or termination agreement with, any director, officer or other employee or other service providers, except for agreements entered into with employees other than the

VPGM and Senior Management in the ordinary course of business and consistent with past practice, (iv) establish, adopt, enter into or amend any collective bargaining, bonus, profit-sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee or other service providers or (v) pay or make, or agree to pay or make, any accrual or arrangement for payment of any pension, retirement allowance, or any other employee benefit;

(H) except as publicly announced, or as announced to employees generally, prior to the date hereof, announce, implement or effect any reduction in labor force, lay-off, early retirement program, severance program or other program or effort concerning the termination of employment of its employees, other than routine employee terminations;

(I) enter into a new line of business;

(J) take any action, other than reasonable actions in the ordinary course of business and consistent with past practice, with respect to accounting policies or procedures (including procedures with respect to the payment of accounts payable and collection of accounts receivable, and the revaluation of any assets);

(K) make or revoke any material Tax election, agree to any audit assessment by any Tax Authority, file any income Tax Return or related estimated income Tax Return (including an amended income Tax Return) unless a copy of such income Tax Return has first been delivered to Sumitomo for its review and approval at a reasonable time prior to filing, enter into any closing agreement with any Tax Authority, settle any Tax claim or assessment relating to MSC or AMM, surrender any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to MSC or AMM;

(L) pay, discharge or satisfy any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), including any litigation, arbitration or other action, other than the payment, discharge or satisfaction, in the ordinary course of business and consistent with past practice, of liabilities reflected or reserved against in the Audited MSC Balance

Sheets or Audited AMM Balance Sheets or subsequently incurred in the ordinary course of business and consistent with past practice;

(M) amend, modify or consent to the termination of any Scheduled Contract, AMM Contract or ASC Contract, except, in each case, pursuant to annual contract term negotiations and in the ordinary course of business and consistent with past practice;

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(N) enter into or amend any agreements pursuant to which any other party is granted exclusive marketing or other exclusive rights of any type or scope with respect to any of its products or technology or which restricts it or, upon completion of the Transactions, Sumitomo or any Sumitomo Affiliate, from engaging or competing in any line of business or in any location;

(O) enter into any lease for real property or material operating lease;

(P) terminate, cancel, amend or modify any insurance coverage policy unless it is promptly replaced by a comparable amount of insurance coverage;

(Q) enter into or amend or otherwise modify any agreement or arrangement with Persons that are affiliates or are executive officers or directors of Apex or any Apex Affiliate;

(R) commence or settle any material Legal Proceeding; or

(S) agree to do anything prohibited by this Section 5.1(a).

(b) Any written request for consent to action in accordance with Section(s) 5.1(a)(G), (K), (L) and (M) solely, that is submitted to Sumitomo by Apex shall be deemed consented to or approved if no response is received from Sumitomo within five (5) Business Days after the submission of such request.

Section 5.2 Confidentiality.

(a) Each of the Purchasers will treat and hold as confidential all Confidential Information, and, unless and until the Transactions shall have been consummated, the Purchasers shall not use such Confidential Information or disclose the same to others, other than counsel, accountants and other Representatives of the Purchasers engaged in connection with the Transactions, who shall be subject to this provision, except with written permission of the Sellers.

(b) Each of the Sellers and their Affiliates will treat and hold as confidential all Confidential Information, and, unless and until the Transactions shall have been consummated, the Sellers shall not use such Confidential Information or disclose the same to others, other than counsel, accountants and other Representatives of the Sellers engaged in connection with the Transactions, who shall be subject to this provision, except with written permission of the Purchasers. If, in the absence of a protective order or the receipt of a waiver hereunder, any of the Sellers is, on the advice of counsel, compelled to disclose any Confidential Information to any Governmental Authority, that Seller may disclose the Confidential Information to the Governmental Authority; provided, however, that the disclosing Person shall use its best efforts to obtain, at the reasonable request of the Purchasers, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Purchasers shall designate.

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Section 5.3 Expenses; Transfer Taxes. Except as otherwise specifically provided herein, all costs and expenses incurred in connection with the Transaction Documents and the transactions contemplated thereby, shall be paid by the Party incurring such expense. For the avoidance of doubt, the Parties agree that such costs and expenses shall exclude any Taxes. The Purchasers shall pay all transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including any monetary adjustments, penalties and interest), but excluding any other Taxes such as income, capital gains, profits, excise, franchise or withholding taxes (including, in each case, any monetary adjustments, penalties, and interest), incurred by the Sellers on the transfer by the Sellers to the Purchasers of the Purchased Properties and Assumed Liabilities, which Taxes shall be borne by the Sellers.

Section 5.4 Further Assurances. Each of the Parties shall take all actions, and do all things, reasonably necessary, proper or advisable on its part to cooperate with the other Party and make effective the transactions contemplated by this Agreement and the Transaction

Documents, including executing and delivering any and all further materials, documents and instruments as may reasonably be requested by the other Party. Without limiting the generality of the foregoing, the Purchasers shall execute and deliver, in a form reasonably satisfactory to the Purchasers, any and all further materials, documents, and instruments, as may reasonably be requested by the Sellers to facilitate the satisfaction of the closing conditions set forth in Sections 6.2(d) and 6.2(g). After the Closing, upon the request of the Purchasers, Reorganized Apex and the Sellers shall (i) execute and deliver any and all further materials, documents and instruments of conveyance, transfer or assignment as may reasonably be requested by the Purchasers to effect, record or verify the transfer to, and vesting in each SC Designated Purchaser, of the Sellers' right, title and interest in and to the Purchased Properties, free and clear of all Liens or Restrictions (other than any Lien or Restriction of the type referred to in Section 2.1(f) through Section 2.1(l)), in accordance with the terms of this Agreement; and (ii) cooperate with the Purchasers, at the Purchasers' expense, to enforce the terms of any Contracts that constitute Purchased Assets and to contest or defend against any Legal Proceeding relating to the Transactions or to the operation of the Project before the Closing Date. After the Closing, Reorganized Apex and the Sellers shall promptly deliver to the Purchasers (i) any mail, packages and other communications addressed to the Sellers relating to the Project, except as otherwise contemplated by the Management Services Agreement, and (ii) any cash or other property that Reorganized Apex or the Sellers receive and that properly belongs to the Purchasers, including any insurance proceeds, payments with respect to receivables, and interest payable thereon.

Section 5.5 Solicitation of Transactions.

(a) From the date of this Agreement to the date this Agreement is terminated pursuant to Section 8.1, the Sellers shall not, and shall cause all Apex Affiliates, MSC and AMM and the Representatives of the Sellers, Apex Affiliates, MSC and AMM not to, directly or indirectly, (i) solicit, initiate, knowingly facilitate or knowingly encourage the submission of, or any inquiries with respect to, any Alternative Proposal by a Third Party; (ii) participate in any discussions or negotiations with a Third Party or such Third Party's Representatives regarding, or furnish to any Third Party or Third Party Representative any information or data with respect

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to, or otherwise cooperate in any way with respect to, or assist or participate in, any Alternative Proposal or any potential Alternative Proposal; or (iii) enter into any letter of intent, memorandum of understanding, acquisition agreement or other agreement, arrangement or understanding that contemplates an Alternative Proposal by such Third Party or requiring the Sellers to terminate, abandon or fail to consummate this Agreement or any of the Transactions; provided, that prior to the termination of this Agreement, the Sellers, in connection with any bona fide Alternative Proposal received by the Sellers without any violation of clause (i) above, may furnish information and data to a Third Party and such Third Party's Representatives and take any other action referred to in clause (ii) above, if: (A) the Board of Directors of Apex determines in good faith that the Alternative Proposal constitutes, or may lead to, a Superior Proposal; (B) Apex gives Sumitomo prompt written notice of the Sellers' intention to furnish information or data to or to engage in negotiations or discussions with the Third Party submitting such Acquisition Proposal or such Third Party's Representatives; (C) prior to providing any information or data to such Third Party or Third Party's Representatives, Apex enters into a confidentiality agreement with such Third Party which shall not contain restrictions that would prevent the Sellers from complying with their disclosure obligations under this Section 5.5; and (D) the Fee Approval Motion has been approved by the Bankruptcy Court.

(b) For purposes of this Agreement, a "Superior Proposal" means any bona fide written Alternative Proposal, not solicited, initiated or knowingly encouraged in violation of clause (i) of Section 5.5(a), made by a Third Party to (i) acquire, directly or indirectly, (A) all or substantially all of the MSC Acquired Shares and the AMM Acquired Quota or all or substantially all of the assets of MSC and AMM and (B) all or substantially all of the other Purchased Properties and (ii) assume the Assumed Liabilities, if and only if the Board of Directors of Apex reasonably determines (after consultation with its financial advisor) that (x) the proposed transaction would be more favorable from a financial point of view to Apex's stockholders and/or creditors than the Transactions, taking into account at the time of such determination any changes to the terms of this Agreement that as of that time had been agreed by Sumitomo and the amount of the release, if any, of Apex and any Apex Affiliates from their obligations under the Financing Documents contemplated by such Alternative Proposal, and (y) the subject Alternative Proposal is otherwise likely to be consummated, taking into account all legal, financial, regulatory, and other aspects of the proposal and the Person making the proposal.

(c) None of Apex nor any Seller shall approve any Alternative Proposal by a Third Party or cause or permit Apex or any Seller to take any action contemplated by Section 5.5(a)(iii); provided, however, notwithstanding the foregoing, Apex may, in response to a written Alternative Proposal received by the Sellers and provided, that there has been no violation of Section 5.5(a)(i) in connection with such Alternative Proposal (or any precursor or related Acquisition Proposal), take any of the actions described in the first sentence of this Section 5.5(c) (i.e., approving an Alternative Proposal by a Third Party or taking an action described in Section 5.5(a)(iii)) (each a "Specified Action") if, and only if:

- (i) the Board of Directors of Apex shall have determined in good faith (after consultation with outside legal counsel) that failing to take

such Specified Action would be inconsistent with such Board' s fiduciary duties;

- (ii) the Board of Directors of Apex shall have determined that such Alternative Proposal constitutes a Superior Proposal (a "Designated Superior Proposal");
- (iii) the Board of Directors of Apex shall have provided written notice to Sumitomo that it intends to take a Specified Action in response to such Designated Superior Proposal (a "Notice of Designated Superior Proposal"), which notice shall attach the most current form or draft of any written agreement providing for the transaction contemplated by such Designated Superior Proposal; and
- (iv) Sumitomo shall not have made, during the period commencing upon its receipt of such Notice of Designated Superior Proposal and ending seven (7) Business Days thereafter (the "Matching Period"), (x) an offer or proposal that the Board of Directors of Apex determines in good faith, after consultation with outside legal counsel and a financial advisor of nationally recognized reputation, is at least as favorable, from a financial point of view, to Apex as such Designated Superior Proposal and (y) an offer to pay up to US\$250,000 of the documented expenses of the Person making the Designated Superior Proposal in the event that Sumitomo' s offer described in clause (x) is accepted and the Designated Superior Proposal is rejected.

During the Matching Period, Apex and its Representatives shall meet with Sumitomo and negotiate in good faith with respect to any revisions to this Agreement Sumitomo may propose. Apex shall deliver to Sumitomo a new Notice of Designated Superior Proposal with respect to (A) each material revision or material modification to a Designated Superior Proposal that was the subject of a previous Notice of Designated Superior Proposal where such revision or modification is adverse to Apex, and (B) each other material revision or material modification to a Designated Superior Proposal that was the subject of a previous Notice of Designated Superior Proposal where such revision or modification is made during a Matching Period, and a new Matching Period shall commence for purposes of this Section 5.5(b) under either of the circumstances described in clauses (A) and (B) above at the time Sumitomo receives the new Notice of Designated Superior Proposal. Notwithstanding anything to the contrary contained in this Agreement, none of the Sellers shall be entitled to take a Specified Action unless (x) any and all such Matching Periods have expired, (y) this Agreement has been, or concurrently is, terminated by its terms pursuant to Section 8.1(j), and (z) the Sellers have paid, or concurrently with the taking of a Specified Action, pay, the Reimbursement Amount to the Purchasers by wire

transfer of immediately available funds, and confirm in a writing delivered to the Purchasers, the Sellers' obligation to pay the Break-Up Fee in the circumstances described in Section 8.3.

(d) The Sellers immediately shall, and shall cause their Representatives immediately to, cease and cause to be terminated any discussions or negotiations with any Persons that may be ongoing with respect to any Alternative Proposal existing prior to the date of this Agreement.

(e) From the date of this Agreement to the date this Agreement is terminated pursuant to Section 8.1, Apex shall:

(i) promptly (and in any event within 24 hours) advise Sumitomo orally and in writing of the receipt, directly or indirectly, of any Alternative Proposal or any inquiries relating to an Alternative Proposal or any request for information with respect to any Alternative Proposal, including the material terms and conditions of such Alternative Proposal and the identity of the Person making such Alternative Proposal, inquiry or request, and furnish Sumitomo a copy of any such written Alternative Proposal, inquiry or request and a copy of any information provided to or by such Person; and (ii) promptly (and in any event within 24 hours) advise Sumitomo orally and in writing of any material changes in any such Alternative Proposal, inquiry or request. Apex shall provide Sumitomo with 48 hours' prior notice (or such lesser prior notice as is provided to the members of the Board of Directors of Apex) of any meeting of the Board of Directors of Apex at which the Board of Directors

of Apex is expected to consider any Alternative Proposal, inquiry or request or to consider providing information to any Person or group in connection with an Alternative Proposal, inquiry or request.

(f) Without limiting the generality of the foregoing, the Sellers acknowledge and hereby agree that any violation of the restrictions set forth in Section 5.5(a) by any Representative of the Sellers shall be deemed to be a breach of Section 5.5(a) by the Sellers. The Sellers shall notify their Representatives of the restrictions under Section 5.5(a) promptly after the date hereof.

Section 5.6 Return of ASC Bolivia L/C Collateral. ASC Bolivia has posted US\$500,000 as cash collateral to secure a letter of credit issued on behalf of ASC Bolivia in favor of Antofagasta Railway Company PLC. Apex and Sumitomo shall take commercially reasonable efforts to have such cash collateral released and repaid to Apex at Closing, or, in lieu thereof, Sumitomo may elect to pay Apex at Closing the sum of US\$500,000 (such release or payment being the "L/C Collateral Payment"). If Sumitomo makes the L/C Collateral Payment, Apex shall assign to Sumitomo all of Apex's right, title and interest in and to such cash collateral.

Section 5.7 Dissolution of ASE. Promptly following the date hereof, Apex and Sumitomo shall take and shall cause their respective Affiliates to take the steps required to adopt and implement a plan for the liquidation and dissolution of ASF.

Section 5.8 Reimbursement of Apex Expenditures. Sumitomo shall cause MSC to pay in cash within three (3) Business Days after the Closing Date, US\$2,500,000, in complete

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satisfaction of the expenditures made by Apex or any Apex Affiliate on behalf of MSC up to the Term Sheet Date as set forth on Schedule F ("Apex Reimbursable Expenditures"). Other than payment of the Apex Reimbursable Expenditures, Apex and any Apex Affiliate shall not demand and shall not cause MSC to pay to Apex or any Apex Affiliate any amount attributable to expenditures made by Apex or any Apex Affiliate on behalf of MSC on or prior to the Term Sheet Date. For clarification, Apex Reimbursable Expenditures are not intended to be included in or be a part of the Deferred Management Fee Obligations, and Apex and any Apex Affiliate shall be entitled to payment of the Apex Reimbursable Expenditures notwithstanding the sale and release by the Service Company of the Deferred Management Fee Obligations. For the avoidance of doubt, MSC shall continue to pay the Management Fee Obligations and reimbursables arising in the ordinary course, from the Term Sheet Date to the Closing Date.

Section 5.9 Efforts to Prevent Insolvency. To the extent within the control of Apex, Apex shall cause Apex Sweden, Apex Luxembourg, AMM, ASC Bolivia and Service Company to meet their respective obligations through the Closing Date to prevent the filing of Insolvency Proceedings. In addition, to the extent within the control of Apex or Reorganized Apex, Apex or Reorganized Apex, as applicable, shall cause Apex Luxembourg to prevent the filing of an Insolvency Proceeding for a period of at least six (6) months and ten (10) days from the Closing Date. Notwithstanding the foregoing, nothing shall prevent Apex, Apex Sweden, Apex Luxembourg, AMM, ASC Bolivia or Service Company from taking any actions in connection with any such filing required under applicable Law, provided that no such filing shall excuse Apex, Reorganized Apex, any Seller or any other Apex Affiliate from any of its obligations under this Agreement or any other Transaction Document.

Section 5.10 SC Working Capital Facility. Nothing in this Agreement shall restrict, limit or otherwise affect or alter any of SC Minerals' rights under the Working Capital Loan Agreement to acquire additional equity securities of MSC in accordance with the terms thereof, and neither this Agreement nor any of the other Transaction Documents shall be deemed to impose any duty or obligation on SC Minerals to refrain from exercising any and all of its rights under the Working Capital Loan Agreement.

Section 5.11 Transmission Line. The Sellers have advised the Purchasers that ASC Bolivia has been engaging in discussions regarding the acquisition of title to the Transmission Line but that such acquisition may not be completed by the Closing. From the date hereof, the Sellers shall continue to keep the Purchasers apprised of the progress of such discussions and negotiations and shall provide the Purchasers with an opportunity to review and approve any related draft documents (such approval not to be unreasonably delayed, conditioned or withheld) and each of the Purchasers, Apex, MSC, and ASC Bolivia shall cooperate to, as promptly as practicable following the Closing, effect the transfer to MSC of all right, title, and interest in and to the Transmission Line in a manner reasonably satisfactory to MSC.

Section 5.12 Public Announcements. The Sellers, on the one hand, and the Purchasers, on the other hand, shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or other public statements with

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respect to this Agreement or the Transactions and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, Legal Proceedings or by obligations pursuant to any listing agreement with any national securities exchange.

Section 5.13 Enforcement in Bolivia. Upon reasonable request by a Party, all Parties shall fully legalize all signatures to this Agreement and any other Transaction Document in accordance with Bolivian law as promptly as practicable.

ARTICLE VI CONDITIONS TO CLOSING

Section 6.1 Conditions to Sumitomo's Obligations. The obligations of the Purchasers to purchase the Purchased Properties and to consummate the Transactions are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived (in whole or in part) by the Purchasers:

- (a) Closing Deliveries to Sumitomo.
 - (i) Each of the items described as being executed and delivered by the Sellers or any other Person pursuant to Section 1.6(a), shall have been executed by the Sellers and such Person, as applicable, and delivered to the Purchasers, and the Sellers shall comply with each of their other obligations under Section 1.6(a).
 - (ii) The Sellers shall have delivered to the Purchasers copies of each of the public deeds evidencing the Governing Documents of MSC, duly certified by a notary public under Bolivian Law, together with certified copies of the registration of all such public deeds in the Registry of Commerce of Bolivia under the care of Fundempresa, each such certificate to be on or shortly prior to the Closing Date;
 - (iii) The Sellers shall have delivered to the Purchasers a copy of the registration of MSC in the Registry of Commerce of Bolivia under the care of Fundempresa with an updated certificate of commercial registration for year 2008 (*certificado de actualización de matricula*) issued on or shortly prior to the Closing Date by the Registry of Commerce of Bolivia under the care of Fundempresa;
 - (iv) The Sellers shall have delivered to the Purchasers a recent notarized copy of the then current articles of association (*statuts coordonnés*) of Apex Luxembourg on or shortly prior to the Closing Date;
 - (v) The Sellers shall have delivered to the Purchasers a copy of the articles of association (*bolagsordning*) of Apex Sweden, duly certified by the Swedish Companies Registration Office (*Bolagsverket*) on or shortly prior to the Closing Date;
 - (vi) The Sellers shall have delivered to the Purchasers copies of each of the public deeds evidencing the Governing Documents of AMM, as amended to reflect the new legislation regarding Swiss LLC's as of January 1, 2008, duly certified by the commercial registry of the Canton of Zug and a certified copy of the extract from the commercial register of the Canton of Zug (*Handelsregisteramt des Kanton Zug – Hauptregister*) regarding AMM on or shortly prior to the Closing Date;
 - (vii) The Sellers shall have delivered to the Purchasers a certificate of the President and Secretary of MSC, dated as of the Closing Date, in form and substance reasonably satisfactory to Sumitomo, as to no amendments to the Governing Documents of MSC since the date specified in Section 6.1(a)(iii);
 - (viii) The Sellers shall have delivered to the Purchasers a certificate signed by a managing officer of AMM, dated as of the Closing Date, in form and substance reasonably satisfactory to Sumitomo, as to no amendments to the Governing Documents of AMM since the date of the certification specified in Section 6.1(a)(vi);

- (ix) The Sellers shall have delivered to the Purchasers a certificate of a manager of Apex Luxembourg, dated as of the Closing Date, in form and substance reasonably satisfactory to Sumitomo, as to (i) no amendments to the Governing Documents of Apex Luxembourg since the date mentioned in Section 6.1(a)(iv), (ii) the resolutions of the managers of Apex Luxembourg authorizing the execution, delivery, and performance of the Transaction Documents to which it is a party and the Transactions; and (iii) incumbency and signatures of the managers of Apex Luxembourg executing such Transaction Documents and any other documents relating to the Transactions;
- (x) The Sellers shall have delivered to the Purchasers a certificate of a director of Apex Sweden, dated as of the Closing Date, in form and substance reasonably satisfactory to Sumitomo, as to (i) no amendments to the Governing Documents of Apex Sweden since the date mentioned in Section 6.1(a)(v), (ii) the resolutions of the shareholders and the board of directors of Apex Sweden

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authorizing the execution, delivery, and performance of the Transaction Documents to which it is a party and the Transactions; and (iii) incumbency and signatures of the directors of Apex Sweden executing such Transaction Documents and any other documents relating to the Transactions; and

- (xi) The Sellers shall have made available and, if requested, delivered to the Purchasers' Bolivian counsel certified copies (*testimonios*) of all management powers of attorney and special powers of attorney, granted by either (i) resolution of the MSC board of directors; (ii) by delegation; or (iii) by an attorney in fact pursuant to authority granted upon it, from the date hereof to the Closing Date.

(b) Required Consents. The Purchasers shall have received all Sumitomo Required Consents and all Authorizations and Governmental Approvals set forth in Section 3.2(a) of the Apex Disclosure Schedule, from the Person to whom such consent applies, in each case, in form and substance reasonably acceptable to the Purchasers.

(c) Representations and Warranties. The representations and warranties of the Sellers set forth in this Agreement (a) that are qualified by materiality or Material Adverse Effect will be true and correct and (b) that are not qualified by materiality or Material Adverse Effect will be true and correct in all material respects, in each case on and as of the Closing with the same force and effect as if they had been made on the Closing Date (except for any such representations and warranties that, by their terms, speak only as of a specific date or dates, in which case such representations and warranties that are qualified by materiality or Material Adverse Effect will be true and correct, and such representations and warranties that are not qualified by materiality or Material Adverse Effect will be true and correct in all material respects, on and as of such specified date or dates).

(d) Covenants and Agreements. The Sellers shall have performed in all material respects the covenants, agreements and conditions required by this Agreement to be performed, satisfied and complied with by them hereunder on or prior to the Closing.

(e) Intentionally Deleted.

(f) No Bankruptcy of Apex Sweden and Apex Luxembourg. Neither Apex Sweden nor Apex Luxembourg shall be the subject of any Insolvency Proceeding.

(g) Bankruptcy Conditions. (i) The Confirmation Order, approving this Agreement and the other Transaction Documents, authorizing Apex and Service Company to enter into and perform their respective obligations hereunder and under the other Transaction Documents, assign their right, title and interest in this Agreement to Reorganized Apex and containing the general releases contemplated hereunder, in form and substance, reasonably

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satisfactory to Sumitomo, shall have been entered on the Bankruptcy Court's docket by the Clerk of the Bankruptcy Court and such order shall have become a Final Order and (ii) the conditions precedent to the occurrence of the effective date of the Plan shall have occurred.

(h) Dissolution of ASF. Either (i) the directors of ASF shall have applied to the Registrar of Companies of the Cayman Islands to have ASF struck from the registrar or (ii) Sumitomo Corporation and Apex Luxembourg shall have passed a special resolution requiring ASF to be wound up voluntarily and appointing a liquidator.

(i) Cayman Insolvency Proceedings. Apex shall have commenced a joint provisional liquidation proceeding under Cayman Law, and (i) The Grand Court of the Cayman Islands shall have made orders appointing joint provisional liquidators for Apex on terms which empower those joint provisional liquidators to approve the Transactions or to concur with actions taken by the Board of Directors of Apex to enter into the Transactions; and (ii) such joint provisional liquidators shall have granted such approval or concurrence, in writing, as applicable.

(j) Expropriation and Change in Law. Except for any such notice or threat pursuant to a Law of general applicability, neither MSC nor AMM has received written notice of, or has been threatened with, any action by any Governmental Authority as a result of any laws or legislation enacted after the date hereof and prior to the Closing Date that would require the sale, transfer, disposition, voluntary or involuntary, by way of condemnation, expropriation or otherwise, of the Mining Concessions, any portion of MSC' s or AMM' s equity capital or any material portion of MSC' s or AMM' s assets.

Section 6.2 Conditions to Apex' s Obligations. The obligation of the Sellers to sell the Purchased Properties and to consummate the Transactions contemplated hereby is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived (in whole or in part) by the Sellers.

(a) Closing Deliveries to the Sellers.

- (i) Each of the items described as being executed and/or delivered by the Purchasers pursuant to Section 1.6(b), shall have been executed by the Purchasers, as applicable, that are parties thereto and delivered to the Sellers and the Purchasers shall comply with each of their other obligations under Section 1.6(b);
- (ii) Sumitomo shall have delivered to Apex a certificate of the General Manager, Corporate Legal & General Affairs Department of Sumitomo, dated as of the Closing Date, in form and substance reasonably satisfactory to Apex, as to (i) the resolutions of the board of directors (or a duly authorized committee thereof) of Sumitomo authorizing the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is

a party; and (ii) incumbency and signatures of the officers of Sumitomo executing such Transaction Documents and any other documents relating to the Transactions.

- (iii) SC Minerals shall have delivered to the Sellers a certificate of a director of SC Minerals, dated as of the Closing Date, in form and substance reasonably satisfactory to the Sellers, as to (i) the resolutions of the board of directors (or a duly authorized committee thereof) of SC Minerals authorizing the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party; and (ii) incumbency and signatures of the directors of SC Minerals executing such Transaction Documents and any other documents relating to the Transactions.
- (iv) Each SC Designated Purchaser shall have delivered to the Sellers a certificate of a director of such SC Designated Purchaser, dated as of the Closing Date, in form and substance reasonably satisfactory to the Sellers, as to (i) the resolutions of the board of directors (or a duly authorized committee thereof) of such SC Designated Purchaser authorizing the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party; and (ii) incumbency and signatures of the director of such SC Designated Purchaser executing such Transaction Documents and any other documents relating to the Transactions.
- (v) The applicable SC Designated Purchaser shall have delivered to MSC a notice of the assignment of each Shareholder Loan.

(b) Representations and Warranties. The representations and warranties of the Purchasers set forth in this Agreement (a) that are qualified by materiality or Material Adverse Effect will be true and correct and (b) that are not qualified by materiality or Material Adverse Effect will be true and correct in all material respects, in each case on and as of the Closing with the same force and effect as if they had been made on the Closing Date (except for any such representations and warranties that, by their terms, speak only as of a specific date or dates, in which case such representations and warranties that are qualified by materiality or Material Adverse Effect will be true and correct, and such representations and warranties that are not qualified by materiality or Material Adverse Effect will be true and correct in all material respects, on and as of such specified date or dates).

(c) Covenants and Agreements. The Purchasers shall have performed in all material respects the covenants, agreements and conditions required by this Agreement to be performed, satisfied and complied with by them hereunder on or prior to the Closing.

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(d) Required Consents. The Sellers shall have received all Apex Required Consents, in each case, in form and substance, reasonably acceptable to the Sellers.

(e) Bankruptcy Condition. The Confirmation Order, in form and substance reasonably satisfactory to the Sellers shall have been entered on the Bankruptcy Court' s docket by the Clerk of the Bankruptcy Court.

(f) Financing Documents. Apex and any applicable Apex Affiliate shall have received terminations and releases, in form and substance reasonably satisfactory to Apex, evidencing the termination of all of Apex' s and any Apex Affiliate' s obligations under the Financing Documents, other than any distributions to be made to the Senior Lender Group (as defined in the Common Security Agreement) under the Plan.

(g) Releases of Third Party Guarantees. Apex and any applicable Apex Affiliate shall have received either (i) terminations and releases, in form and substance reasonably satisfactory to Apex, evidencing the termination of all of Apex' s and any Apex Affiliate' s obligations under those guarantees and other obligations of Apex and any Apex Affiliate listed on Section 6.2(g) of the Apex Disclosure Schedule to the extent such guarantees and obligations relate to the business and assets of MSC, AMM or to any other Purchased Properties or (ii) an assumption by the Purchasers of the obligations of Apex and the Apex Affiliates referred to in clause (i) of this Section 6.2(g), which assumption shall be in form and substance reasonably satisfactory to Apex.

(h) Receipt of L/C Collateral Payment. Apex shall have received the L/C Collateral Payment.

(i) Apex Reimbursable Expenditures. Apex shall have been paid the Apex Reimbursable Expenditures.

(j) Cayman Insolvency Proceedings. The joint provisional liquidator appointed by The Grand Court of the Cayman Islands shall have either approved the Transactions or concurred with the actions taken by the Board of Directors of Apex to enter into the Transactions, in each case, in writing.

Section 6.3 Conditions to Obligations of Each Party. The respective obligations of each Party to this Agreement to consummate the Transactions shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, which may be waived by the Purchasers or the Sellers, as applicable, in writing:

(a) No Legal Impediments to Closing. There shall not be in effect any Legal Proceeding preventing the consummation of the Transactions, seeking any Losses as a result of the Transactions, or otherwise affecting the right or ability of the Purchasers to own, operate or control the Purchased Properties, nor shall any Legal Proceeding be pending that seeks any of the foregoing. There shall not be any Law prohibiting the Sellers from selling or the Purchasers

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from owning, operating or controlling the Purchased Properties, or that makes this Agreement or the consummation of any of the Transaction Documents illegal.

(b) Regulatory Approvals. Any waiting period, and any extensions thereof, applicable to the consummation of the Transactions under any applicable Law shall have expired or been terminated, and any approvals required thereunder shall have been obtained.

(c) Management Services Agreement. The Management Services Agreement shall have been duly executed and delivered by each signatory thereto; provided that Apex and Sumitomo shall have finalized Schedules B, C, F and G in accordance with the provisions of the Management Services Agreement.

ARTICLE VII SURVIVAL AND INDEMNIFICATION

Section 7.1 Survival. (a) All representations and warranties contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall terminate on the Closing Date and shall not be subject to any claim after the Closing Date, provided, however, that the representations and warranties of Apex contained in Section 2.1(f), (g), (h), (i), (j) and (k), (Ownership of Purchased Properties) and the representations and warranties contained in Section 3.1(b) and Section 3.1(d) (Capitalization) (the "Special Representations and Warranties") will remain operative and in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the Parties, including as against Reorganized Apex, indefinitely ; provided, further, that the representations and warranties of Apex contained in Section 3.13 (Interested Party Transactions) will remain operative and in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the Parties, including as against Reorganized Apex, until the two-year anniversary of the Closing Date; provided, further, that such expiration shall not affect the rights of any Indemnified Party under this Article VII or otherwise to seek recovery for indemnifiable Losses arising out of any fraud or intentional misrepresentation by any Party until the expiration of the applicable statute of limitations. All covenants of the Parties will survive according to their respective terms.

(b) (i) All liabilities of Reorganized Apex and the Sellers for indemnification (A) pursuant to Section 7.2(a)(i) or Section 7.2(a)(ii), shall survive indefinitely, (B) pursuant to Section 7.2(a)(iii), shall survive until the two-year anniversary of the Closing Date, (C) pursuant to Section 7.2(a)(iv), shall survive according to the respective terms of such covenant and (D) in each case, shall not be subject to objection or disallowance under Section 502(e) of the Bankruptcy Code.

(ii) All liabilities of the Purchasers for indemnification (A) pursuant to Section 7.2(b)(i), shall survive indefinitely and (B) pursuant to Section 7.2(b)(ii), shall survive according to the respective terms of such covenant.

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Section 7.2 Indemnification. (a) From and after the Closing Date, Reorganized Apex and the Sellers shall jointly and severally indemnify and hold harmless the Purchasers, each Sumitomo Affiliate, MSC, AMM and each of their respective Representatives (each a "Sumitomo Indemnified Party") from any Losses arising out of or resulting from, or relating to (i) any Excluded Liabilities, (ii) any inaccuracy or breach of a Special Representations and Warranty, (iii) any inaccuracy or breach of the representations and warranties contained in Section 3.13 (Interested Party Transactions) or (iv) any breach of any covenant of Apex or any Seller in this Agreement, the Bill of Sale, the Assignment and Assumption Agreement or the AMM Assignment Agreement.

(b) From and after the Closing Date, the Purchasers shall jointly and severally indemnify and hold harmless Reorganized Apex and the Sellers, and each of their respective Representatives (each an "Apex Indemnified Party"), from any Losses arising out of or resulting from, or relating to (i) any Assumed Liability or (ii) any breach of any covenant of the Purchasers in this Agreement, the Bill of Sale, the Assignment and Assumption Agreement or the AMM Assignment Agreement.

Section 7.3 Tax Indemnity. From and after the Closing Date, Reorganized Apex and the Sellers shall jointly and severally indemnify and hold harmless the Purchasers, MSC and AMM from all Taxes resulting from the several liability of MSC or AMM solely by reason of either MSC or AMM having been a member of any consolidated, combined or unitary group of which Apex or an Apex Affiliate was the common parent on or prior to the Closing Date.

Section 7.4 Limitations on Indemnification. Notwithstanding anything herein to the contrary, Reorganized Apex and the Sellers shall not be obligated to indemnify the Indemnified Parties under this Article VII: (i) unless the aggregate of all Losses indemnifiable by the Sellers exceeds US\$1,000,000 (the "Indemnity Basket"), in which case the Indemnified Parties shall be entitled to recover all Losses, including the amount equal to the Indemnity Basket up to a total aggregate amount of the Cash Purchase Price (the "Indemnification Cap"); provided, however, that the Indemnification Cap and the Indemnity Basket shall not apply to any of the Indemnifying Party's indemnification obligations arising out of, relating to or resulting from the Excluded Liabilities or fraud or intentional misrepresentation by the Sellers.

Section 7.5 Intentionally Deleted.

Section 7.6 Procedures for Indemnification.

(a) An Indemnified Party shall, promptly following the discovery of any matter that may give rise to any Losses, notify the Indemnifying Party in writing of its claim for indemnification for such Losses, specifying in reasonable detail the nature of such Losses and the amount of the Losses estimated to accrue therefrom; provided, however, that the Indemnified Party's failure to so notify the Indemnifying Party shall not release the Indemnifying Party, in whole or in part, from its obligations under this Article VII, except to the extent (and solely to the extent) that the Indemnifying Party has been actually prejudiced as a result of such failure.

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Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, within five (5) Business Days after the Indemnified Party's receipt of such request, all information and documentation reasonably requested by the Indemnifying Party with respect to such Losses. Following notification to the Indemnifying Party pursuant to this Section 7.6, the Indemnified Party may, at the sole expense and liability of the Indemnifying Party, exercise full control of the defense, compromise, or settlement of any Legal Proceeding that may give rise to a claim for indemnification under this Article VII, unless and until the Indemnifying Party (i) delivers a written confirmation to such Indemnified Party that the indemnification provisions of this Article VII are applicable to such Legal Proceeding and that, subject to the other provisions of this Article VII, the Indemnifying Party shall indemnify such Indemnified Party in respect of such Legal Proceeding pursuant to the terms of this Article VII; (ii) notifies such Indemnified Party in writing of the Indemnifying Party's intention to assume the defense thereof and thereafter conducts the defense actively and diligently; and (iii) retains legal counsel reasonably satisfactory to such Indemnified Party to conduct the defense of such Legal Proceeding. Notwithstanding anything to the contrary in the immediately preceding sentence, the Indemnifying Party shall not have any right to assume the defense of such Legal Proceeding, if (1) such Legal Proceeding seeks an injunction or other equitable relief and not money damages only; or (2) the settlement or compromise of, or an adverse judgment with respect to, such Legal Proceeding is, in the good faith judgment of the Indemnified Party, likely to establish a precedent, custom or practice materially adverse to the continuing business interests or the reputation of the Indemnified Party.

(b) The Indemnified Party and the Indemnifying Party shall use their commercially reasonable efforts to cooperate with the party assuming the defense, compromise, or settlement of any such Legal Proceeding in accordance herewith in any manner that such party may reasonably request. If the Indemnifying Party assumes the defense of any such Legal Proceeding, the Indemnified Party shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, but the fees and expenses of such counsel shall be the expense of such Indemnified Party unless (i) the Indemnifying Party has specifically agreed to pay such fees and expenses or (ii) the Indemnified Party has been advised by its counsel that there may be one or more legal defenses from claims available to it that are different from or additional to those available to the Indemnifying Party or that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such Legal Proceeding (in either of which cases the Indemnifying Party shall not have the right to direct the defense, compromise, or settlement of such Legal Proceeding on behalf of the Indemnified Party), and in any such case the reasonable fees and expenses of such separate counsel shall be borne by the Indemnifying Party, it being understood and agreed, however, that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys at any time for the Indemnified Party. No Indemnified Party shall settle or compromise or consent to entry of any judgment with respect to any such Legal Proceeding for which it is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party, unless the Indemnifying Party fails to assume control of such Legal Proceeding in the manner provided in this Section 7.6(b). The Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise or consent

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to entry of any judgment with respect to any such Legal Proceeding (i) in which any relief other than the payment of money damages is or may be sought against any Indemnified Party or (ii) that does not include as an unconditional term thereof the giving by the claimant, party conducting such investigation, plaintiff or petitioner to such Indemnified Party of a release from all Losses with respect to such Legal Proceeding.

**ARTICLE VIII
TERMINATION**

Section 8.1 Events of Termination. This Agreement may be terminated prior to the Closing:

- (a) at any time by mutual written consent executed by the Sellers and the Purchasers;
- (b) by either the Purchasers or the Sellers if (i) the non-terminating party is in material breach of any material provision of this Agreement and such breach shall not have been cured within thirty (30) days of receipt by such party of written notice from the terminating party of such breach; and (ii) the terminating party is not, on the date of termination, in material breach of any material provision of this Agreement;
- (c) by the Purchasers if the Plan Support Agreement has not been executed and delivered to Apex by the Required Lenders on or before the date hereof;
- (d) by the Purchasers if Apex has not commenced the Bankruptcy Case by January 12, 2009;
- (e) by the Purchasers if the Fee Approval Motion has not been approved by the Bankruptcy Court within ten (10) days of the Petition Date or such later date that the Bankruptcy Court holds a hearing to consider approval of the Fee Approval Motion, which shall, in no event, be later than twenty (20) days following the Petition Date;
- (f) by the Purchasers if the Support Motion has not been approved by the Bankruptcy Court on (i) an interim basis within ten (10) days of the Petition Date or (ii) a final basis within twenty (20) days of the Petition Date;
- (g) by the Purchasers if the Confirmation Order has not been entered on the Bankruptcy Court docket by March 16, 2009;
- (h) by the Purchasers if the Confirmation Order has not become a Final Order by March 26, 2009;
- (i) by either the Purchasers or the Sellers if (i) satisfaction of a closing condition of the terminating party in Article VI is impossible; and (ii) the terminating party is not, on the date of termination, in material breach of any material provision of this Agreement;

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(j) by the Purchasers or the Sellers if the Sellers take a Specified Action in compliance with Section 5.5 provided, the Sellers may not terminate this Agreement pursuant to this Section 8.1(j), and any such purported termination of this Agreement by the Sellers shall be void unless the Board of Apex shall have taken such Specified Action in full compliance with the procedures specified in Section 5.5(c), and either (A) if such termination occurs on or after the Petition Date, prior to or simultaneously with such termination the Bankruptcy Court shall have approved the Fee Motion in its entirety authorizing Apex to pay the Break-Up Fee and Reimbursement Amount to Sumitomo as provided in Section 8.3, or (B) if such termination occurs prior to the Petition Date, prior to or simultaneously with such termination, the Sellers shall have paid the Reimbursement Amount to Sumitomo and confirmed in writing their obligation to pay the Break-Up Fee as provided in Section 8.3;

(k) by (i) the Purchasers if (A) the Closing has not occurred on or prior to March 31, 2009 for any reason; and (B) the Purchasers are not, on the date of termination, in material breach of any material provision of this Agreement, or (ii) the Sellers if (A) the Closing has not occurred on or prior to June 30, 2009 for any reason; and (B) the Sellers are not, on the date of termination, in material breach of any material provision of this Agreement; or

(l) by either the Purchasers or the Sellers if consummation of the Transactions has been prohibited by a final, non-appealable order, decree or injunction of a court of competent jurisdiction or other Governmental Authority.

Section 8.2 Effect of Termination or Breach.

(a) Except as specifically set forth in Section 8.2(b), in the event this Agreement is terminated pursuant to Section 8.1, all obligations of the Purchasers and the Sellers under this Agreement shall terminate and there shall be no liability of the Purchasers or the Sellers to any of the other Parties, and the Purchasers or the Sellers shall bear their own expenses incurred in connection with the negotiation,

preparation, execution and performance of this Agreement; provided that the foregoing shall not relieve either the Purchasers or the Sellers of Losses actually incurred by the other Parties as a result of any breach of this Agreement by such Parties.

(b) If this Agreement is terminated as provided in Section 8.2(a), this Agreement shall become null and void and of no further force and effect (except for any liability of any party then in breach), except for the obligations of the Parties contained in this Section 8.2, Section 8.3 and Article IX hereof which shall survive.

Section 8.3 Purchaser Protections. If this Agreement is terminated by the Purchasers pursuant to Section 8.1(b) or by either the Purchasers or the Sellers pursuant to Section 8.1(j), then the Sellers shall pay the Reimbursement Amount to the Purchasers by wire transfer of immediately available funds within two (2) Business Days of such termination. Payment of the Reimbursement Amount shall not be deemed to be liquidated damages for any breach of any of Apex or any Seller. If this Agreement is terminated by either the Purchasers or the Sellers

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pursuant to Section 8.1(j) and if the Sellers, MSC or AMM, or any of them, consummates an Alternative Transaction, then the Sellers shall promptly pay the Break-Up Fee to the Purchasers by wire transfer of immediately available funds within two (2) Business Days of the consummation of such Alternative Transaction. The obligation of the Sellers to pay the Reimbursement Amount and/or Break-Up Fee shall be joint and several.

ARTICLE IX MISCELLANEOUS

Section 9.1 Entire Agreement. This Agreement (together with the Schedules and Exhibits annexed hereto) contains, and is intended as, a complete statement of all of the terms of the agreements among the Parties with respect to the matters provided for herein and therein, and supersede and discharge any previous agreements and understandings between the Parties with respect to those matters.

Section 9.2 Governing Law; Language. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WITHOUT REGARD TO ANY CHOICE OR CONFLICTS OF LAW PROVISION OR RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK.

Section 9.3 Submission to Jurisdiction; Waiver of Jury Trial; Service of Process.

(a) Each Party hereby (i) submits to the non-exclusive jurisdiction of any New York State or United States federal court located in the Borough of Manhattan, The City of New York, for the purpose of any Legal Proceeding arising out of or relating to this Agreement and the other Transaction Documents, (ii) agrees that all claims in respect of any such Legal Proceeding may be heard and determined in such courts, and (iii) irrevocably waives (to the extent permitted by applicable Law) any objection which it now or hereafter may have to the laying of venue of any such Legal Proceeding brought in any of the foregoing courts, and any objection on the ground that any such Legal Proceeding in any such court has been brought in an inconvenient forum; provided, however, that during the pendency of the Bankruptcy Case, the Bankruptcy Court shall have and 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.

(b) Nothing in this Section 9.3 shall limit the right of each Party to bring any Legal Proceeding against any other Party or its property in the courts of other jurisdictions.

(c) EACH PARTY HERETO HEREBY AGREES TO WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY

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IN ANY LEGAL PROCEEDING OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH PARTY AGREES THAT

ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT IN ANY WAY LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION 9.3(C) AS TO ANY ACTION, COUNTERCLAIM, OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS. A COPY OF THIS SECTION 9.3(C) MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER OF THE RIGHT TO TRIAL BY JURY AND CONSENT TO TRIAL BY COURT.

(d) Each of Apex, each Seller and each Purchaser, by the execution and delivery of this Agreement, designates and appoints CT Corporation System for a period of no less than seven (7) years as the authorized agent of each such Person upon whom process may be served in any Legal Proceeding against such Person instituted by any other such Person and based upon or arising out of this Agreement or any of the Transaction Documents, in any New York State or United States federal court located in the Borough of Manhattan, in The City of New York. Such designations and appointments shall be irrevocable, unless and until a successor authorized agent in the County and State of New York reasonably acceptable to the Sellers in connection with any successor appointed by any of the Purchasers, and to Sumitomo in connection with any successor appointed by Apex or any of the Sellers, shall have been appointed, such successor shall have accepted such appointment, and written notice thereof shall have been given to all Parties. Each of Apex, each Seller and each Purchaser further agrees that service of process upon its authorized agent or successor shall be deemed in every respect personal service of process upon such Person in any such Legal Proceeding. Upon the execution and delivery of this Agreement, Apex, each Seller and each Purchaser has furnished to all Parties evidence of its appointment of CT Corporation System as such agent and evidence of full payment to CT Corporation System for its charges in respect thereof.

Section 9.4 Headings. The article and section headings of this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement.

Section 9.5 Notices. All notices and other communications hereunder shall be in writing and shall be delivered personally, telecopied (if receipt of which is confirmed by the Person to whom sent), or sent by internationally recognized overnight delivery service to the Parties at the following addresses (or to such other Person or address for a Party as specified by such Party by like notice) (notice shall be deemed given and received upon receipt, if delivered personally, by overnight delivery service or by telecopy, or on the seventh (7th) Business Day

following mailing, if mailed, except that notice of a change of address shall not be deemed given and received until actually received):

- (a) If to Apex or any of the Sellers, to them at:

c/o Apex Silver Mines Corporation
1700 Lincoln Street, Suite 3050
Denver, Colorado 80203 U.S.A.
Attention: President
Telecopier: +1 (303) 839-5907

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006 U.S.A.
Attention: Richard S. Lincer; Sean A. O' Neal
Telecopier: +1 (212) 225-3999

- (b) If to the Purchasers, to them at:

Sumitomo Corporation
8-11, Harumi, 1-chome,
Chuo-ku, Tokyo, 104-8610 Japan
Attention: General Manager of San Cristobal Project Department
Telecopier: +81-3-5166-6423

with a copy to:

Morrison & Foerster LLP
1290 Avenue of the Americas
New York, New York 10104 U.S.A.
Attention: Michael C. Graffagna
Telecopier: +1 (212) 468-7900

Section 9.6 Severability. If at any time any covenant or provision contained herein is deemed in a final ruling of a court or other body of competent jurisdiction to be invalid or unenforceable, such covenant or provision shall be considered divisible and such covenant or provision shall be deemed immediately amended and reformed to include only such portion of such covenant or provision as such court or other body has held to be valid and enforceable; and the Parties agree that such covenant or provision, as so amended and reformed, shall be valid and binding as though the invalid or unenforceable portion had not been included herein.

Section 9.7 Amendment; Waiver. No provision of this Agreement may be amended or modified except by an instrument or instruments in writing signed by the Parties and designated

as an amendment or modification, subject, if the Bankruptcy Case has commenced, to Bankruptcy Court approval. No waiver by any Party of any provision of this Agreement shall be valid unless in writing and signed by the Party making such waiver and designated as a waiver. No failure or delay by any Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof or the exercise of any other right, power, or remedy preclude any further exercise thereof or the exercise of any other right, power, or remedy. No waiver of any provision hereof shall be construed as a waiver of any other provision.

Section 9.8 Assignment and Binding Effect. Except as otherwise provided for in Section 4.1(g), no Party may assign any of its rights or delegate any of its obligations under this Agreement without (a) the prior written consent of the other Parties, and (b) the complete written assumption by the assignee of all of the obligations of the assignor under this Agreement. All of the terms and provisions of this Agreement shall be binding on, and shall inure to the benefit of, the respective successors and permitted assigns of the Parties. Any purported assignment or delegation not complying with the foregoing shall be null and void.

Section 9.9 No Benefit to Others. Except as expressly set forth herein, the representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and their respective successors and permitted assigns, and they shall not be construed as conferring and are not intended to confer any rights, remedies, obligations, or liabilities on any other Person, unless such Person is expressly stated herein to be entitled to any such right, remedy, obligation, or liability.

Section 9.10 Counterparts. This Agreement may not be executed by the Parties in separate counterparts.

Section 9.11 Rules of Construction. The Parties agree that they have been represented by counsel during the negotiation, preparation, and execution of this Agreement and, therefore, waive the application of any Law or rule of construction providing that ambiguities in an agreement or other document shall be construed against the Party drafting such agreement or document.

Section 9.12 No Partnership. No provision of this Agreement creates a partnership or joint venture between or among the Parties or makes any Party the agent of any other Party for any purpose. No Party has the authority or power to bind, to contract in the name of, or to create any liability for any other Party in any way or for any purpose.

Section 9.13 Stock Purchase Agreement Not a Plan. This Agreement does not constitute a plan of reorganization or confirmation thereof under title 11 of the United States Code. The Transactions are not effective unless and until the Bankruptcy Court enters the Confirmation Order and such order has become a Final Order.

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Section 9.14 Interpretation.

(a) This Agreement has been negotiated and executed by the Parties in English. In the event any translation of this Agreement is prepared for convenience or any other purpose, the provisions of the English version shall govern. Certain Schedules and/or Exhibits to this Agreement are being executed in both English and Spanish or German. If any doubt, misunderstanding or dispute arises in their interpretation, the English version shall govern. In case of any enforcement action in the Republic of Bolivia, however, the official translation attained in accordance with Bolivian laws shall govern.

(b) Each definition used in this Agreement includes the singular and the plural, and reference to the neuter gender includes the masculine and feminine where appropriate. The headings to the Articles and Sections are for convenience of reference and shall not affect the meaning or interpretation of this Agreement. Except as otherwise stated, reference to Sections, Exhibits and Schedules means the Sections, Exhibits and Schedules of this Agreement. The words "including" or "includes" or similar terms used herein shall be deemed to be followed by the words "without limitation," whether or not such additional words are actually set forth herein. Each agreement referred to herein shall mean such agreement as amended, supplemented or modified from time to time to the extent permitted by the applicable provisions thereof and hereof. The Exhibits and Schedules hereto are hereby incorporated by reference into, and shall be deemed a part of, this Agreement, provided that no Exhibit that consists of a form of agreement or instrument shall be deemed to become effective until executed and delivered by the appropriate parties.

Section 9.15 Specific Performance. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the Parties have executed this Agreement in eight (8) originals as of the date first written above.

APEX SILVER MINES LIMITED

By: /s/ Robert P. Vogels

Its: Vice President and Controller

APEX LUXEMBOURG S.À.R.L.

By: /s/ Gerald Malys

Its: Manager

APEX SILVER MINES SWEDEN AB

By: /s/ Gerald Malys

Its: Director

APEX SILVER MINES CORPORATION

By: /s/ Robert P. Vogels

Its: Vice President and Controller

ASC BOLIVIA LDC (SUCURSAL BOLIVIA)

By: Gerald Malys

Its: _____

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SUMITOMO CORPORATION

By: /s/ Haruo Matsuzaki

Its: General Manager, San Cristobal Project
Department

SC MINERALS AKTIEBOLAG

By: /s/ Haruo Matsuzaki

Its: Vice President

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Annex I

For purposes of this Agreement, the following terms have the following meanings:

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

“Agreement” means this Purchase and Sale Agreement (including the Exhibits and Schedules attached hereto).

“Alternative Proposal” means any bona fide proposal not solicited, initiated or knowingly encouraged in violation of Section 5.5 made by a Third Party to acquire, directly or indirectly (i) from Apex and/or any Apex Affiliate any of the MSC Acquired Shares or the AMM Acquired Quota, and/or (ii) from MSC or AMM, as applicable, any of the issued and outstanding shares or quotas of MSC or AMM, as applicable, and/or (iii) from Apex, an Apex Affiliate, MSC or AMM any right, option or other instrument giving such Third Party or Third Parties the right to acquire such shares or quotas from Apex, any Apex Affiliate or from MSC or AMM, as the case may be, and/or (iv) from MSC or AMM, any material asset of MSC or AMM.

“Alternative Transaction” means any acquisition by one or more Third Parties, directly or indirectly, (i) from Apex and/or any Apex Affiliate of twenty percent (20%) or more of the MSC Acquired Shares or twenty percent (20%) or more of the AMM Acquired Quota, and/or (ii) from MSC of twenty percent (20%) or more of the issued and outstanding shares of MSC (computed after issuance) and/or (iii) from AMM of twenty percent (20%) or more of the issued and outstanding quotas of AMM (computed after issuance) and/or (iv) of a right, option or other instrument giving such Third Parties the right to acquire the shares or quotas specified in clause (i), (ii), (iii) and/or (v) of any material asset of MSC or AMM.

“AMM” has the meaning specified in Recital B.

“AMM Acquired Quota” has the meaning specified in Section 1.1(b).

“AMM Contracts” has the meaning specified in Section 3.7(c).

“AMM Management Agreement” means the Management and Services Agreement dated September 25, 2006, among AMM, ASF and Service Company.

“AMM Quotaholders Agreement” means the shareholders agreement by Apex Sweden, CMB, and AMM dated September 25, 2006.

“Apex” has the meaning specified in the preamble.

“Apex Affiliate” means any Entity Controlled by Apex not including MSC and AMM.

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“Apex Convertible Senior Subordinated Notes” means Apex’ s 2.875% and its 4.0% Convertible Senior Subordinated Notes due 2024.

“Apex Disclosure Bundle” means the collection of documents so named, dated the date hereof, delivered by Apex to Sumitomo.

“Apex Disclosure Schedule” means the Schedule so named and attached hereto as Schedule A.

“Apex Indemnified Parties” has the meaning specified in Section 7.2(b).

“Apex Luxembourg” has the meaning specified in the preamble.

“Apex Reimbursable Expenditures” has the meaning specified in Section 5.8.

“Apex Required Consents” has the meaning specified in Section 2.1(d).

“Apex Sweden” has the meaning specified in the preamble.

“ASC Bolivia” has the meaning specified in the preamble.

“ASC Bolivia Assets” means all right, title and interest of ASC Bolivia in, to and under (i) the Transmission Line Loan Documents, (ii) any Contract (whether oral or written) with respect to the Transmission Line, including any letter of intent, acquisition agreement or other similar Contract and (iii) all accounts receivable of ASC Bolivia existing on the Closing Date.

“ASC Contracts” has the meaning specified in Section 3.7(e).

“ASF” means Apex Silver Finance Ltd., an exempted company limited by shares organized under the Laws of the Cayman Islands, British West Indies, with its registered office at Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, British West Indies.

“Assumed Liabilities” has the meaning specified in Section 1.1(g).

“Audited AMM Balance Sheets” has the meaning specified in Section 3.5(a).

“Audited MSC Balance Sheets” has the meaning specified in Section 3.5(a).

“Authorizations” means resolutions, approvals, or consents of third parties, creditors, shareholders, partners, and members, excluding any resolution, approval, or consent of any Governmental Authority.

“Bankruptcy Case” has the meaning specified in Recital I.

“Bankruptcy Code” has the meaning specified in Section 4.1(a).

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“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or such other United States federal court of competent jurisdiction with respect to the Bankruptcy Case.

“Bankruptcy Rules” has the meaning specified in Section 4.1(f).

“Bolivia” means the Republic of Bolivia.

“Bolivian Corporations Law” means the Bolivian Code of Commerce enacted by Decree Law No. 14379 of February 25, 1997.

“Break-Up Fee” has the meaning specified in Section 4.1(b).

“Bs.” means Bolivianos, the lawful currency of Bolivia.

“Business Day” means any day other than Saturday, Sunday, and a day on which banks in New York, New York, U.S.A. or Tokyo, Japan are required or permitted to close.

“Cash Purchase Price” has the meaning specified in Section 1.2.

“Causes of Action” means all claims, rights, actions, causes of action, liabilities, obligations, suits, debts, remedies, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages or judgments, whether known or unknown and whether asserted or unasserted.

“CEDEIM” means *Certificado de Devolución de Impuestos* as regulated under the Laws of Bolivia.

“CHF” means Swiss francs, the lawful currency of Switzerland.

“Closing” has the meaning specified in Section 1.5.

“Closing Date” has the meaning specified in Section 1.5.

“Common Security Agreement” means that certain Common Security Agreement dated as of December 1, 2005, among MSC, Apex, Apex Luxembourg, Apex Sweden, AMM, ASF, Sumitomo, SC Minerals, Comercial Metales Blancos AB, Corporacion Andina de Fomento, the Administrative Agent, Technical Agent and Collateral Agent identified therein, and the Senior Lenders and Hedge Banks referred to therein.

“Company Agreements” has the meaning specified in Section 1.6(a)(vi).

“Confidential Information” means all information and documents received from MSC or AMM or concerning the Purchased Properties, except such information used or disclosed (i) as required by applicable securities or other Laws or stock exchange rules or administrative process, (ii) as necessary to obtain the necessary Government Approvals for the Project or to obtain financing for the Project from potential lenders and providers of credit support; (iii) as necessary

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to comply with a court or administrative order; (iv) as necessary in connection with any litigation or arbitration arising out of or related to the Project or this Agreement; (v) as necessary to respond to an environmental emergency or other emergency that may materially and adversely affect MSC or AMM or the Project; (vi) for information (A) that was in the possession of a Party or its Affiliates prior to receipt thereof from any Representative of Apex, MSC or AMM (B) that has become known to such Party independently of any disclosure by any Representative of Apex, MSC or AMM and which has not been wrongfully disclosed to or obtained by such Party; and (vii) for information that is or becomes generally available to the public other than as a result of a breach of Section 5.2.

“Confirmation Order” has the meaning specified in Section 1.6(a)(xvii).

“Contract” means any note, bond, indenture, debenture, security agreement, trust agreement, mortgage, lease, contract, license, franchise, permit, guaranty, joint venture agreement, or other agreement, instrument, commitment, or obligation, whether oral or written.

“Control” means the ability to direct or cause the direction (whether through the ownership of voting securities, by contract, or otherwise) of the management and policies of a Person or to control (whether affirmatively or negatively and whether through the ownership of voting securities, by contract, or otherwise) the decision of such Person to engage in the particular conduct at issue. A Person shall be rebuttably presumed to control an Entity if such Person owns, directly or indirectly through one or more intermediaries, (a) sufficient shares of stock or other equity interests of such Entity to allow such Person, under ordinary circumstances, to elect or direct the election of a majority of the members of the board of directors or other governing body of such Entity or (b) shares of stock or other equity interests of such Entity representing, in the aggregate, more than fifty percent (50%) of the aggregate outstanding economic interests in such Entity. The term “Controlled” has a meaning correlative to that of Control.

“Current Operating Plan” means that certain San Cristóbal Program and Budget, dated November 1, 2008.

“Deferred Management Fee Obligations” means any liability or obligations of any nature due and owing by MSC as of the Closing Date under the 2006 MSC Management Agreement, which liability or obligation is outstanding by reason of a payment restriction or similar provision of the Financing Documents.

“Designated Superior Proposal” has the meaning specified in Section 5.5(c)(ii).

“Disclosure Statement” has the meaning specified in Section 4.1(a).

“Employee Benefit Plan” means any “employee benefit plans” (within the meaning of Section 3(1) of ERISA), and any other material employee benefit plan, program, or arrangement for any current or former employee, director, consultant or independent contractor, or any dependent, survivor or beneficiary (in each case, whether or not resident in the United States),

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with respect to any of the foregoing, which is maintained, administered or contributed to (directly or indirectly) of MSC, AMM or any ERISA Affiliate of MSC or AMM.

“Entity” means any *sociedad anónima, sociedad de responsabilidad limitada, Aktiengesellschaft, Gesellschaft mit beschränkter Haftung, privat aktiebolag, société à responsabilité limitée*, corporation, exempted company limited by shares, general or limited partnership, limited liability company, joint venture, trust, association, unincorporated entity of any kind, or Governmental Authority.

“Environmental Guidelines” means the following guidelines as in effect on the date hereof applicable to the Project (referred to in the Equator Principles framework): (a) World Bank Environmental, Health and Safety Guidelines (i) Mining and Milling - Open Pit dated August 11, 1995, (ii) Pollution Abatement and Prevention Handbook 1998: General Environmental Guidelines, (iii) Operational Policy 4.01 (Environmental Assessment), (iv) Operation Policy 4.04 (Natural Habitats), (v) Operational Policy 4.11 (Cultural Property), (vi) Pollution Abatement and Prevention Handbook 1998: Part III Project Guidelines, Monitoring and Base Metal and Iron Ore Mining, and (vii) the Reclamation and Closure Plan Section in the Knight-Piesold Environmental Assessment of the Project (Closure Plan) and (b) IFC Safeguard Policies dated September 1998.

“Environmental Laws” means any and all Bolivian Laws relating to the regulation or protection of the environment or human health or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or toxic or hazardous substances or wastes into the indoor or outdoor environment, including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or toxic or hazardous substances or wastes.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Entity that would be considered a single employer with MSC pursuant to Section 414(b), (c), (m) or (o) of the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated under those sections or pursuant to Section 4001(b) of ERISA and the regulations promulgated thereunder.

“Excluded Liabilities” has the meaning specified in Section 1.1(h).

“Existing Debt” means Indebtedness and other liabilities outstanding at any time under the Financing Documents.

“Fee Approval Motion” has the meaning specified in Section 4.1(b).

“Filing” means any written registration, declaration, application, or filing.

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“Final Order” means (i) an order or judgment of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending, or (ii) in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from

which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such order.

“Financial Statements” has the meaning specified in Section 3.5(a).

“Financing Documents” has the meaning specified in the Common Security Agreement.

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

“Governing Documents” means the *estatutos sociales, escritura de constitución social*, articles or certificate of incorporation or formation or association, general or limited partnership agreement, limited liability company or operating agreement, bylaws, or other incorporation or governing documents of any Entity.

“Government Approvals” means any authorization, consent, approval, License, lease, ruling, permit, tariff, rate, certification, exemption, Filing, variance, claim, Judgment, decree, sanction, or publication of, by or with, any notice to, any declaration of or with, or any registration by or with, or any other action or deemed action by or on behalf of, any Governmental Authority.

“Governmental Authority” means any domestic or foreign national, regional, or local, court, governmental department, commission, authority, central bank, board, bureau, agency, official, or other instrumentality exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government.

“Indebtedness” means, without duplication, (a) all obligations created, issued, or incurred for borrowed money (whether by loan, the issuance and sale of debt securities, or the sale of property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such property from such other Person); (b) all obligations to pay the deferred purchase price or acquisition price of property or services (other than accrued expenses and trade accounts payable incurred in the ordinary course of business that are not more than 90 days past due); (c) all obligations to pay money evidenced by a note, bond, debenture, or similar instrument; (d) the principal amount of all obligations under or in respect of leases capitalized in accordance with generally accepted accounting principles as used in the U.S.; (e) all reimbursement obligations in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions; (f) all payment obligations under any hedge instrument

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to the extent constituting a liability under generally accepted accounting principles as used in the U.S.; and (g) all obligations of another Person of the type listed in clauses (a) through (f) of this definition, payment of which is guaranteed by or secured by Liens on the property of such Person (with respect to Liens, to the extent of the value of property pledged pursuant to such Liens if less than the amount of such obligations).

“Indemnification Cap” has the meaning specified in Section 7.4.

“Indemnified Party” means either a Sumitomo Indemnified Party or an Apex Indemnified Party, as the context requires.

“Indemnifying Party” means any party required to provide indemnification pursuant to Article VII hereof.

“Indemnity Basket” has the meaning specified in Section 7.4.

“Insolvency Proceeding” means any bankruptcy, insolvency, liquidation, company reorganization, restructuring, controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*), scheme of arrangement (*concordat*), appointment of provisional liquidator, receiver or administrative receiver, notification, resolution, or petition for winding up or similar proceeding, under any applicable Law, in any jurisdiction and whether voluntary or involuntary.

“Intellectual Property Rights” means all permits, licenses, trademarks, patents or agreements with respect to the usage of technology or other intellectual property (other than those constituting Governmental Approvals and off-the-shelf commercially available software).

“Judgment” means any judgment, writ, order, decree, injunction, award, restraining order, or ruling of or by any court, judge, justice, arbitrator, or magistrate, including any bankruptcy court or judge, and any writ, order, decree, or ruling of or by any Governmental Authority.

“Knowledge” or “knowledge” means, with respect to Apex or any of the other Sellers, the actual knowledge (assuming the reasonable discharge of such Person’s professional responsibility) of Jeffrey G. Clevenger, Gerald J. Malys, Deborah J. Friedman, Robert P. Vogels, Terry L. Owen or Michael Bunch.

“Law” or “Laws” means any national, regional, or local, or any foreign, statute, law, code, ordinance, rule, regulation, resolution, Judgment, regulatory agreement with a Governmental Authority, or general principle of common or civil law or equity.

“L/C Collateral Payment” has the meaning specified in Section 5.6.

“Legal Proceeding” means any private or governmental action, suit, complaint, claim, demand, arbitration, legal, or judicial or administrative proceeding or investigation, whether civil, criminal, or of any other nature.

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“Licenses” means all franchises, concessions, licenses, permits, authorizations, certificates, variances, exemptions, consents, leases, rights of way, easements, instruments, orders, and approvals issued by any Governmental Authority.

“Lien” means any (a) security agreement, conditional sale agreement, or other title retention agreement; (b) lease, consignment, or bailment given for security purposes; and (c) lien, charge, restrictive agreement, prohibition against transfer, mortgage, pledge, legal privilege, option, encumbrance, adverse interest, security interest, claim, attachment, exception to or defect in title, or other ownership interest (including reservations, rights of entry, possibilities of reverter, encroachments, easements, rights of way, restrictive covenants, leases, and Licenses granted to other Persons) of any kind, but excluding any of the foregoing created or imposed by or pursuant to this Agreement or any other Transaction Document.

“Losses” means losses, liabilities, damages, dues, deficiencies, assessments, Liens, fines, interest, penalties, including with respect to Taxes, costs, expenses, and obligations, including amounts reasonably paid in settlement, prosecuting, defending, or otherwise, and reasonable legal, accounting, experts, and other fees, costs, and expenses, in connection with claims, actions, suits, proceedings, hearings, investigations, charges, complaints, demands, injunctions, and Judgments.

“Management Fee Obligations” means any and all liability or obligations of any nature due and owing by AMM, ASF or MSC as of the Closing Date under the AMM Management Agreement or under the 2006 MSC Management Agreement, other than Deferred Management Fee Obligations.

“Management Services Agreement” means an agreement among MSC, AMM and Service Company in the form of Exhibit G hereto.

“Matching Period” has the meaning specified in Section 5.5(c)(iv).

“Material Adverse Effect” means with respect to any Person, any event, change or effect that, when taken individually or together with all other adverse events, changes and effects, is or is reasonably likely (a) to be materially adverse to the condition (financial or otherwise), properties, assets (including Purchased Properties), liabilities (including Assumed Liabilities), business, operations, results of operations or prospects of such Person; and (b) to prevent or materially delay consummation of the Transactions or otherwise to prevent such Person or its Affiliates from performing its obligations under this Agreement or any Transaction Document.

“Mining Concessions” means, collectively, the mining concessions listed in Section 3.3 of the Apex Disclosure Schedule.

“MSC” has the meaning specified in Recital A.

“MSC Acquired Shares” has the meaning specified in Section 1.1(a).

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“MSC Shareholders Agreement” means the shareholders agreement among Apex Luxembourg, Apex Sweden, Old Metals, SC Minerals, and MSC dated September 25, 2006.

“Notice of Designated Superior Proposal” has the meaning specified in Section 5.5(c)(iii).

“Other MSC Obligations to Apex” means any and all rights related to any and all liabilities or obligations of any nature due and owing by MSC or AMM to Apex or any Apex Affiliate as of the Closing Date other than the Apex Reimbursable Expenditures and any liabilities and obligations expressly provided for in this Agreement.

“Other Property Rights” means, collectively, easements, leases, mining and civil usufructs, rights of way, surface rights, real estate other than mining concessions, and other property rights.

“Party” or “Parties” has the meaning specified in the preamble.

“Performance Security” has the meaning specified in Section 3.16.

“Permitted Liens” means, with respect to any Person, the following: (a) Liens for Taxes, assessments, or other governmental charges or levies not yet due and payable or that are being contested in good faith through appropriate proceedings diligently conducted and for which adequate reserves (as determined on the basis of generally accepted accounting principles as used in the U.S.) have been established; (b) Liens of carriers, warehousemen, mechanics, materialmen, and landlords incurred in the ordinary course of business for sums not yet due or that are being contested in good faith through appropriate proceedings diligently conducted and for which adequate reserves (as determined on the basis of generally accepted accounting principles as used in the U.S.) have been established; (c) Liens incurred in the ordinary course of business in connection with workmen’s compensation, unemployment insurance, or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, legal privileges, leases, bank guarantees, letters of credit, and Contracts (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds; (d) purchase money security interests or Liens on property acquired or held by the applicable Person in the ordinary course of business to secure the purchase price of such property or to secure indebtedness incurred solely for the purpose of financing the acquisition of such property; (e) easements, restrictions, and other minor defects of title that are not, in the aggregate, material or which do not, individually or in the aggregate, materially and adversely affect the value of the property affected thereby or the use thereof for its intended purpose; and (f) Liens incurred under the Financing Documents.

“Person” means any natural person or Entity.

“Petition” has the meaning specified in Section 4.1(a).

“Petition Date” means the date of the filing of the Petition with the Bankruptcy Court.

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“Plan” has the meaning specified in Recital J.

“Plan Support Agreement” has the meaning specified in Section 4.2.

“Post-Signing Returns” has the meaning specified in Section 5.1.

“Preemptive Rights” means (a) the preferred rights that the shareholders of a *sociedad anónima* have, pursuant to Article 255 of the Bolivian Corporations Law, entitling them to purchase newly issued shares of such *sociedad anónima* in accordance with their *pro rata* shareholding; (b) the preferred rights that the quotaholders of a *Gesellschaft mit beschränkter Haftung* have, pursuant to Article 787 of the Swiss Code of Obligations, entitling them to acquire a proportional increase of their quotas; and (c) the preferred rights that the shareholders of a Swedish *privat aktiebolag* have entitling them to purchase newly issued shares of such *privat aktiebolag* in accordance with their *pro rata* shareholding.

“Project” means the operation by MSC of the San Cristóbal open pit silver, zinc, and lead mine and processing facilities located in the Potosi Department, Bolivia, the processing of silver, zinc, and lead ores to recover silver bearing zinc, and lead concentrates, and related infrastructure (including rail transportation, power transmission, and port facilities), and the marketing and sale of the products thereof and other activities reasonably ancillary thereto.

“Purchased Assets” means the Shareholder Loans, the Deferred Management Fee Obligations, the Other MSC Obligations to Apex and the ASC Bolivia Assets.

“Purchased Equity” means the MSC Acquired Shares and the AMM Acquired Quota.

“Purchase Price” means, collectively, the consideration specified in Section 1.2 and the Assumption of the Assumed Liabilities.

“Purchased Properties” means the Purchased Equity and the Purchased Assets.

“Purchasers” have the meanings specified in the preamble.

“Reimbursement Amount” has the meaning specified in Section 4.1(b).

“Reorganized Apex” means a new subsidiary of Apex to be formed as a holding company pursuant to the Plan.

“Reorganized Apex Parent Guaranty” means an agreement of Reorganized Apex substantially in the form of Exhibit F hereto.

“Representative” means the directors, officers, employees, agents (including the financial and legal advisors) and other representatives of a Person.

“Required Lenders” has the meaning specified in Section 4.1(a).

“Required Noteholders” has the meaning specified in Section 4.1(a).

“Restriction” means, with respect to any share capital, partnership interest, membership right or membership interest in a limited liability company, or other equity interest or security, any voting or other trust or agreement, option, warrant, preemptive right (other than Preemptive Rights), right of first offer, right of first refusal, escrow arrangement, proxy, buy-sell agreement, power of attorney, or other Contract (but excluding this Agreement and the other documents relating to the Transactions), or any License that, conditionally or unconditionally, (a) grants to any Person the right to purchase or otherwise acquire, or obligates any Person to sell or otherwise dispose of or issue, or otherwise gives or, whether upon the occurrence of any event or with notice or lapse of time or both or otherwise, may give any Person the right to acquire (i) any such share capital, partnership interest, membership right or membership interest in a limited liability company, or other equity interest or security; (ii) any proceeds of, or any distributions paid or that are or may become payable with respect to,

any such share capital, partnership interest, membership right or membership interest in a limited liability company, or other equity interest or security; or (iii) any interest in such share capital, partnership interest, membership right or membership interest in a limited liability company, or other equity interest or security or any such proceeds or distributions; (b) restricts or, whether upon the occurrence of any event or with notice or lapse of time or both or otherwise, is reasonably likely to restrict the transfer or voting of, or the exercise of any rights or the enjoyment of any benefits arising by reason of ownership of, any such share capital, partnership interest, membership right or membership interest in a limited liability company, or other equity interest or security or any such proceeds or distributions; or (c) creates or, whether upon the occurrence of any event or with notice or lapse of time or both or otherwise, is reasonably likely to create a Lien or purported Lien affecting such share capital, partnership interest, membership right or membership interest in a limited liability company, or other equity interest or security, proceeds or distributions.

“Scheduled Contracts” has the meaning specified in Section 3.7(a).

“SC Minerals” has the meaning specified in the preamble.

“SC Designated Purchaser” has the meaning set forth in the preamble.

“Seller” and “Sellers” have the meanings specified in the preamble.

“Service Company” has the meaning set forth in the preamble.

“Shareholder Loans” has the meaning specified in Recital C.

“Solvent” means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person’s liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code; (b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability

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to pay as such debts and liabilities mature; (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital; and (f) such Person is not insolvent within the meaning of applicable Laws.

“Special Representations and Warranties” has the meaning specified in Section 7.1.

“Specified Action” has the meaning specified in Section 5.5(c).

“Subsidiary” means, with respect to any Person:

(a) a corporation a majority in voting power of whose share capital with voting power, under ordinary circumstances, to elect directors is, at the date of determination thereof, directly or indirectly, owned by such Person, by a Subsidiary of such Person, or by such Person and one or more Subsidiaries of such Person, without regard to whether the voting of such share capital is subject to a voting agreement or similar Restriction,

(b) a partnership or limited liability company in which such Person or a Subsidiary of such Person is, at the date of determination thereof, (i) in the case of a partnership, a general partner of such partnership with the power affirmatively to direct the policies and management of such partnership or (ii) in the case of a limited liability company, the managing member or, in the

absence of a managing member, a member with the power affirmatively to direct the policies and management of such limited liability company, or

(c) any Entity (other than a corporation, partnership, or limited liability company) in which such Person, a Subsidiary of such Person, or such Person and one or more Subsidiaries of such Person, directly or indirectly, at the date of determination thereof, has (i) the power to elect or direct the election of a majority of the members of the governing body of such Person (whether or not such power is subject to a voting agreement or similar Restriction) or (ii) in the absence of such a governing body, at least a majority ownership interest.

“Sumitomo” has the meaning specified in the preamble.

“Sumitomo Affiliate” means any Entity Controlled by Sumitomo.

“Sumitomo Disclosure Schedule” means the Schedule so named and attached hereto as Schedule B.

“Sumitomo Indemnified Parties” has the meaning specified in Section 7.2.

“Sumitomo Required Consents” has the meaning specified in Section 2.2(d).

“Superior Proposal” has the meaning specified in Section 5.5(b).

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“Support Motion” has the meaning specified in Section 4.1(c).

“Tax Authority” means any Governmental Authority of any kind with the power to impose any Tax.

“Tax” or “Taxes” means all taxes, however denominated, foreign or domestic, including any monetary adjustments, interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any Tax Authority, which taxes include all income or profits taxes, payroll and employee withholding taxes, unemployment insurance, social security taxes, income withholding taxes, capital gains taxes, sales and use taxes, value added taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business or municipal license (*patente municipal*) taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, severance taxes, production taxes, transfer taxes, workers’ compensation, governmental charges, and other obligations of the same or of a similar nature to any of the foregoing.

“Tax Returns” means all returns, declarations, reports, forms, claims for refund, estimates, information returns, and statements and other documentation, including amendments, required to be maintained or filed with or supplied to any Tax Authority in connection with any Taxes.

“Term Sheet” means that certain term sheet dated November 13, 2008, relating to the Transactions, between Apex and Sumitomo.

“Term Sheet Date” means November 13, 2008, which is the date of the Term Sheet.

“Third Party” means any Person other than Apex, an Apex Affiliate, Sumitomo, a Sumitomo Affiliate, MSC or AMM.

“Third Party Concentrate Sales Agreements” has the meaning specified in the Common Security Agreement.

“Transaction Documents” means this Agreement, the Management Services Agreement, the Apex Required Consents, the Reorganized Apex Parent Guaranty, the Plan Support Agreement, the Plan, the Disclosure Statement, that certain Secured, Super-Priority Debtor-in-Possession Credit Agreement, by and between Apex and Sumitomo or a Sumitomo Affiliate, to be entered into in connection with the Bankruptcy Case, the Bill of Sale, the Assignment and Assumption Agreement, the AMM Assignment Agreement and any and all other

documents, instruments, and agreements being or to be executed and delivered in connection with the transactions contemplated hereby (including in connection with the satisfaction of each Party's conditions hereunder) or thereby.

“Transactions” means the transactions specified in Section 1.1.

“Transmission Line” means the electric transmission line currently owned by San Cristóbal Transportadora de Electricidad S.A. and extending from the substation at Punutuma,

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located in the Quijarro Province, Potosí Department, Bolivia, to the substation at San Cristóbal silver, zinc, and lead mine located in Potosí Department, Bolivia.

“Transmission Line Loan Documents” means (a) that certain Power Line Construction and Transmission Agreement, dated as of January 14, 2005 (as amended by the First Amendment to Power Line Construction and Transmission Agreement, dated as of March 14, 2005, and as further amended by the Second Amendment to Power Line Construction and Transmission Agreement, dated as of August 29, 2005), among MSC, Ingelec S.A., Ingelec Transportadora de Electricidad S.A., Ingelec Electricity Transportation Investments, Corp., and San Cristóbal Transportadora de Electricidad, S.A.; (b) that certain Loan Agreement, dated as of April 15, 2005, between ASC Bolivia and San Cristóbal Transportadora de Electricidad, S.A.; (c) that certain Promissory Note, dated as of April 15, 2005, made by San Cristóbal Transportadora de Electricidad, S.A. in favor of ASC Bolivia; (d) that certain Escrow Agreement and Account Pledge and Security Agreement, dated as of April 15, 2005, among San Cristóbal Transportadora de Electricidad, S.A., ASC Bolivia, and Atlantic Security Bank, Cayman Islands; (e) that certain Pledge Agreement, dated as of April 15, 2005, made by Ingelec Electricity Transportation Investments, Corp., Raúl Quiroga, and Rene Fernández in favor of ASC Bolivia; (f) that certain Pledge Agreement, dated as of April 15, 2005, made by Ingelec Transportadora de Electricidad S.A. in favor of ASC Bolivia; (g) that certain Guaranty, dated as of April 15, 2005, made by Ingelec S.A., Ingelec Transportadora de Electricidad S.A., and Ingelec Electricity Transportation Investments, Corp. in favor of ASC Bolivia; and (h) a moveables pledge agreement to be entered into pursuant to the agreement referred to in clause (b) of this definition.

“2006 MSC Management Agreement” means the Amended and Restated Management and Service Agreement dated September 25, 2006, between MSC and Service Company.

“2006 PSA” means that certain Purchase and Sale Agreement dated as of September 25, 2006, among Apex, Apex Luxembourg, Apex Sweden and Sumitomo.

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

“US\$” means United States Dollars.

“Working Capital Loan Agreement” means that certain Loan Agreement, dated as of August 11, 2008, by and between Apex and SC Minerals, as amended by that certain First Amendment to Loan Agreement dated October 1, 2008, that certain Second Amendment to Loan Agreement dated October 31, 2008, that certain Third Amendment to Loan Agreement dated November 27, 2008, that certain Fourth Amendment to Loan Agreement dated December 17, 2008, and as further amended, modified, supplemented or amended and restated from time to time.

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