FORM 6-K

Current report of foreign issuer pursuant to Rules 13a-16 and 15d-16 Amendments

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 6-K

REPORT OF FOREIGN PRIVATE ISSUER
Pursuant to Rule 13a-16 or 15d-16
under the Securities Exchange Act of 1934

For the Month of June, 2021

Commission File Number: 001-37668

FERROGLOBE PLC

(Name of Registrant)

5 Fleet Place
London, EC4M7RD
(Address of Principal Executive Office)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.

Form 20-F ☒ Form 40-F ☐

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1): ☐

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7): ☐

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes ☐ No ☒

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): N/A

EXHIBIT LIST:

Exhibit

99.1	Press release dated June 23, 2021 announcing launch of (a) offer to exchange the 9⅜% senior notes due 2022 for a combination of new 9⅜% senior secured notes due 2025 and equity fee, (b) consent solicitation relating to the 9⅜% senior notes due 2022 and (c) offer to subscribe to additional 9.0% senior secured notes due 2025.
99.2	Indenture dated May 17, 2021 among Ferroglobe Finance Company, PLC, as Issuer, Ferroglobe PLC as Parent Guarantor, the Guarantors (as defined therein), and GLAS Trustees Limited, as Trustee, GLAS Trust Corporation Limited as Security Agent, Global Loan Agency Services Limited as Paying Agent and GLAS Americas LLC as Registrar and Transfer Agent.

99.3	Intercreditor Agreement dated May 17, 2021 among GLAS Trustees Limited as Original Super Senior Note Trustee, FERROGLOBE PLC as Parent, GLAS Trust Corporation Limited as Security Agent and others.

SIGNATURES

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, thereunto duly authorized.

Date: June 23, 2021

FERROGLOBE PLC

By: /s/ Marco Levi

Name: Marco Levi
Title: Chief Executive Officer (Principal Executive Officer)

Exhibit 99.1

LAUNCH OF (A) OFFER TO EXCHANGE THE 9⅜% SENIOR NOTES DUE 2022 FOR A COMBINATION OF NEW 9⅜% SENIOR SECURED NOTES DUE 2025 AND EQUITY FEE, (B) CONSENT SOLICITATION RELATING TO THE 9⅜% SENIOR NOTES DUE 2022 AND (C) OFFER TO SUBSCRIBE FOR ADDITIONAL 9.0% SENIOR SECURED NOTES DUE 2025

London, June 23, 2021

Exchange Offer and Consent Solicitation

Ferroglobe PLC (the "Parent"), Ferroglobe Finance Company, PLC (the "UK Issuer") and Globe Specialty Metals, Inc. ("Globe" and, together with the UK Issuer, the "Issuers") are offering to qualifying noteholders the opportunity to exchange (the "Exchange Offer") any and all of the 9⅜% Senior Notes due 2022 issued by the Parent and Globe (the "Old Notes") for a total consideration per $1,000 principal amount of Old Notes comprising (i) $1,000 aggregate principal amount of new 9⅜% senior secured notes due 2025 to be issued by the Issuers (the "New Notes") *plus* (ii) a cash fee, which the Parent will, at the direction of the qualifying noteholders (which direction shall be deemed to be given by such qualifying noteholders participating in the Exchange Offer and Consent Solicitation), apply as cash consideration for a subscription of new ordinary shares of the Parent (the "Equity Fee"), as set forth in the table below, or in any other manner that the Ad Hoc Group (as defined below) may agree with the Parent.

Old Notes to be Exchanged	Outstanding Principal Amount	CUSIP Numbers and ISINs	Total Exchange Consideration[(1)(2)]
9⅜% Senior Notes due 2022	$ 350,000,000	144A: 315419 AA9 / US315419AA96 Reg S: G33858 AA2 / USG33858AA20	$1,000 principal amount of New Notes and the Equity Fee

(1) For each $1,000 principal amount of Old Notes.

(2) The Equity Fee represents the cash fee for each $1,000 principal amount of Old Notes, which the Parent will, at the direction of the qualifying noteholders (which direction shall be deemed to be given by such qualifying noteholders participating in the Exchange Offer and Consent Solicitation), apply as cash consideration for a subscription of new ordinary shares of the Parent to amount in aggregate to 1.75% of the ordinary shares in the Parent after giving effect to the Restructuring (as defined below), to be allotted proportionally among the participating qualifying noteholders.

The Exchange Offer is being made pursuant to the Offering and Consent Solicitation Memorandum dated June 23, 2021 (the "Offering and Consent Solicitation Memorandum"). The Exchange Offer is scheduled to expire at 11:59 p.m., New York City time, on July 21, 2021, unless extended (such time and date, as the same may be extended, the "Expiration Date"). Qualifying noteholders who validly tender and do not validly withdraw their Old Notes by the Expiration Date will be eligible to receive the total exchange consideration set forth in the table above. Qualifying noteholders may withdraw tendered Old Notes at any time prior to the Expiration Date but not thereafter. Qualifying noteholders who validly tender their Old Notes will be deemed to have consented to the Proposed Amendments (as defined below).

Concurrently with the Exchange Offer, the Issuers are soliciting consents (the "Consents") to certain proposed amendments (the "Proposed Amendments") to the indenture governing the Old Notes (the "Old Notes Indenture"). The Proposed Amendments will eliminate substantially all of the restrictive covenants, all of the reporting covenants and certain of the events of default in the Old Notes Indenture, if adopted. The Proposed Amendments to the Old Notes will become effective upon execution of a supplemental indenture to the Old Notes Indenture (the "Supplemental Indenture"). Qualifying noteholders who validly tender their Old Notes (and do not validly withdraw such tendered Old Notes prior to the Expiration Date) will be deemed to have delivered Consents to the Proposed Amendments with respect to the entire principal amount of Old Notes tendered by such holders. Holders may not deliver Consents without tendering

their Old Notes and holders may not tender their Old Notes without delivering Consents. The consent solicitation with respect to the Proposed Amendments to the Old Notes Indenture is referred to herein as the "Consent Solicitation."

The consummation of the Exchange Offer is subject to satisfaction or waiver of certain conditions (the "Exchange Offer Conditions"), including, among others, the receipt of valid tenders of Old Notes, not withdrawn, and Consents, not revoked, of not less than $335.72 million (or 95.92%) in principal amount outstanding of the Old Notes in the Exchange Offer (the "Minimum Participation Condition"). For the avoidance of doubt, the Requisite Consents must be received from holders holding not less than a majority of the then outstanding (as determined in accordance with the Old Notes Indenture) aggregate principal amount of the Old Notes in order to effect the Proposed Amendments in the manner contemplated by the Consent Solicitation. The Exchange Offer Conditions also include (i) the receipt of at least $40 million in gross proceeds from the issuance and sale of new ordinary shares of the Parent to investors (the "Equity Placement") and (ii) the receipt of at least $20 million in gross proceeds from the Super Senior Notes Offer or from the backstop arrangement thereof (together, the "Transaction Effective Date Condition"). The Transaction Effective Date Condition may not be waived.

The Parent and the Issuers reserve the right, subject to applicable law, at their option and in their sole discretion to extend, reopen, amend or terminate the Exchange Offer and the Consent Solicitation at any time as provided in the Offering and Consent Solicitation Memorandum. Details of any such extension, amendment or termination will be announced as provided in the Offering and Consent Solicitation Memorandum as soon as reasonably practicable after the relevant decision is made.

Super Senior Notes Offer

Concurrently with the Exchange Offer and Consent Solicitation, the UK Issuer is offering to the existing holders of the Old Notes the opportunity to subscribe to additional senior secured notes due 2025 ($40 million of which in principal amount was issued on May 17, 2021) (the "Super Senior Notes") that is equal to its pro rata share of the principal amount of all Old Notes beneficially held by such noteholder as at July 7, 2021 (the "Record Time") ("Super Senior Notes Entitlement"). Pursuant to the purchase agreement for the Super Senior Notes Offer available from the Information Agent (the "Super Senior Notes Offer Purchase Agreement"), a qualifying noteholder must, (A) by no later than July 7, 2021 (the "Super Senior Notes Offer Subscription Deadline"), (i) participate in the Exchange Offer and Consent Solicitation with respect to all of its holdings by submitting Custody Instructions on the Exchange Offer and the Consent Solicitation; (ii) return to the information agent a duly executed and completed account holder letter; (iii) and provide all relevant KYC documentation required of it to the escrow agent; and (B) by no later than July 22, 2021 (the "Super Senior Notes Escrow Funding Deadline"), deposit the funds necessary for its proposed purchase of Super Senior Notes with the Escrow Agent.

Series	Offer Price	Temporary ISIN and Common Codes[(1)]	Permanent ISIN and Common Codes
9.0% Senior Secured Notes due 2025	100.0%	To be provided by announcement subsequent to the date of the Offering and Consent Solicitation Memorandum	IAI: XS2344588509 / 234458850 144A: XS2343568874 / 234356887 Reg S: XS2343568528 / 234356852

(1) After one business day following the settlement date, the ISINs and common codes will be the permanent ISINs and common codes assigned for the $40 million of Super Senior Notes issued on May 17, 2021.

Background and Rationale

Beginning in 2020, we engaged in discussions with an ad hoc group of noteholders (the "Ad Hoc Group" and each member of the Ad Hoc Group shall be an "Ad Hoc Group Member") to put forward a plan to refinance the Old Notes which mature in March 2022 and restructure our balance sheet. On March 27, 2021, the Parent and Globe and certain other members of the group entered into a lock-up agreement (the "Lock-Up Agreement") with the Ad Hoc Group, Grupo VM and Tyrus Capital and its affiliate that set forth a plan to implement the restructuring. The plan to implement the restructuring comprises the following three inter-conditional transactions (together, the "Restructuring"):

- the issuance of the Super Senior Notes;

- the issuance of at least $40 million in new equity of Ferroglobe, which Ferroglobe intends to accomplish pursuant to the Equity Placement; and

- the exchange by way of this Exchange Offer of certain of the Old Notes for New Notes with an extended maturity of December 31, 2025 and other amended terms, and the amendment of any remaining Old Notes in accordance with the Proposed Amendments through the Consent Solicitation.

Neither the Exchange Offer, the Super Senior Notes Offer nor the Equity Placement will be completed unless they are all completed as part of the Transaction Effective Date steps. While the Super Senior Notes Offer and the Equity Placement are backstopped by the Ad Hoc Group and Tyrus, respectively, such issuances are subject to certain conditions, and there can be no assurance that the proposed Restructuring will be completed. To the extent Ferroglobe does not achieve the threshold of Noteholder acceptances of 95.92% in principal amount of the Old Notes required for the Exchange Offer, it may extend the Exchange Offer in its sole discretion. Noteholders holding approximately 97% in aggregate principal amount of Old Notes have signed the Lock-Up Agreement to support the Restructuring, but there can be no assurance that such support will not be withdrawn or the Lock-Up Agreement terminated prior to the implementation of the Restructuring or that, if withdrawn or terminated, additional consents required to implement the Restructuring will be obtained.

Indicative Timetable

Date	**Calendar Date**
Commencement Date	June 23, 2021
Super Senior Notes Offer Subscription Deadline	July 7, 2021
Expiration Date	11:59 p.m., New York City time, on July 21, 2021, unless extended.
Settlement Date	July 29, 2021, unless extended, assuming all conditions to the Exchange Offer, the Consent Solicitation and the Super Senior Notes Offer have been satisfied or waived.

The complete terms and conditions of the Exchange Offer and the Consent Solicitation are described in the Offering and Consent Solicitation Memorandum, copies of which may be obtained by qualifying noteholders by contacting GLAS Trust Company LLC, the information agent for the Exchange Offer, at: GLAS Specialist Services Limited , 45 Ludgate Hill, London EC4M 7JU, United Kingdom, email: tes@glas.agency

The New Notes and the New Notes guarantees and the Super Senior Notes and the Super Senior Notes guarantees have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the "Securities Act") or the securities laws of any other jurisdiction. The New Notes and the Super Senior Notes may not be offered or sold within the United States except to an institutional "Accredited Investor" within the meaning of Rule 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) of Regulation D under the Securities Act or a qualified institutional buyer as defined in Rule 144A under the Securities Act in reliance on one or more exemptions from the registration requirement under the Securities Act or in offshore transactions in reliance on Regulation S under the Securities Act ("Regulation S").

Forward-Looking Statements

This release contains "forward-looking statements" within the meaning of U.S. securities laws. Forward-looking statements are not historical facts but are based on certain assumptions of management and describe Issuers' future plans, strategies and expectations. Forward-looking statements often use forward-looking terminology, including words such as "anticipate", "believe", "could", "estimate", "expect", "forecast", "guidance", "intends", "likely", "may", "plan", "potential", "predicts", "seek", "will" and words of similar meaning or the negative thereof.

Forward-looking statements contained in this press release are based on information currently available to Issuers and assumptions that management believe to be reasonable but are inherently uncertain. As a result, Issuers' actual results, performance or achievements may

differ materially from those expressed or implied by these forward-looking statements, which are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors that are, in some cases, beyond Ferroglobe's control.

All information in this press release is as of the date of its release. Issuers do not undertake any obligation to update publicly any of the forward-looking statements contained herein to reflect new information, events or circumstances arising after the date of this press release. You should not place undue reliance on any forward-looking statements, which are made only as of the date of this press release.

No offer

This press release is not an offer to sell or a solicitation of an offer to buy or exchange or acquire securities in the United States or in any other jurisdiction. The securities referenced in this press release may not be offered, sold, exchanged or delivered in the United States absent registration or an applicable exemption from the registration requirement under the Securities Act. This press release is not directed at, or intended for distribution, publication, availability to or use by, any person or entity that is a citizen or resident or located in any locality, state, country or other jurisdiction, where such distribution, publication, availability or use would be contrary to law or regulation, or which would require any registration or licensing within such jurisdiction.

INVESTOR CONTACT:

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MEDIA CONTACT:

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Ferroglobe
Advancing Materials Innovation

Exhibit 99.2

Execution Version

FERROGLOBE FINANCE COMPANY, PLC

as Issuer

Ferroglobe PLC

as Parent Guarantor

and the Guarantors party hereto

9.0% Senior Secured Notes due 2025

_____

INDENTURE

Dated as of May 17, 2021

GLAS Trustees Limited,
as Trustee

Global Loan Agency Services Limited,
as Paying Agent

GLAS Americas LLC
as Registrar and Transfer Agent

GLAS Trust Corporation Limited,
as Security Agent

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INDENTURE dated as of May 17, 2021, among Ferroglobe Finance Company, PLC, a public limited company incorporated under the laws of England and Wales (the "*Issuer*"), Ferroglobe PLC, a public limited company incorporated under the laws of England and Wales as the parent guarantor (the "*Parent*"), the Guarantors (as defined herein) from time to time party hereto, and GLAS Trustees Limited, as trustee (in such capacity, the "*Trustee*"), GLAS Trust Corporation Limited as security agent (in such capacity, the "*Security Agent*"), Global Loan Agency Services Limited as paying agent (in such capacity, the "*Paying Agent*") and GLAS Americas LLC as registrar (in such capacity, the "*Registrar*") and transfer agent (in such capacity, the "*Transfer Agent*").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of (a) the Issuer's U.S. dollar-denominated 9.0% Senior Secured Notes due 2025 issued on the Issue Date (the "*Initial Notes*") and (b) additional securities having identical terms and conditions as the Notes that may be issued on any later issue date subject to the conditions and in compliance with the covenants set forth herein (the "*Additional Notes*"). Unless the context otherwise requires, in this Indenture references to the "*Notes*" include the Initial Notes and any Additional Notes that are actually issued.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions.

"*ABL Intercreditor Agreement*" means the intercreditor agreement to be entered into after the Issue Date, among, *inter alios*, the Trustee, the Security Agent, the Parent, the Issuer, and the Guarantors party thereto, in the form attached to this Indenture as Exhibit C, as amended from time to time.

"*ABL Guarantors*" means the Guarantors party to the ABL Intercreditor Agreement.

"*ABL Priority Collateral*" has the meaning given to it under the ABL Intercreditor Agreement.

"*ABL Priority Obligations*" has the meaning given to it under the ABL Intercreditor Agreement.

"*ABL Facility*" means an asset-based lending facility designated by the Issuer as an "ABL Facility" by written notice to the Trustee and which will be subject to the terms of the ABL Intercreditor Agreement.

"*Acquired Indebtedness*" means Indebtedness (1) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary, (2) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with such Person becoming a Restricted Subsidiary or such acquisition or (3) of a Person at the time such Person merges with or into or consolidates or otherwise combines with the Parent or any Restricted Subsidiary. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of assets and, with respect to clause (3) of the preceding sentence, on the date of the relevant merger, consolidation or other combination.

"*Additional Notes Offer Condition*" means, in connection with the Incurrence of Indebtedness represented by Additional Notes under Section 4.01(b)(iv)(A), the Issuer shall have made an offer in good faith prior to the Transaction Effective Date to holders of Existing Notes to issue Notes in an aggregate principal amount equal to the full amount of Notes permitted to be Incurred under Section 4.01(b)(iv)(A) to such holders (calculated based on the percentage such holders' aggregate principal amount of Existing Notes represents to the aggregate principal amount of all Existing Notes then outstanding), subject to any rounding and minimum denomination required to be exempt from Regulation (EU) 2017/1129, as amended.

"*Affiliate*" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Agent*" means any Registrar, co-registrar, Transfer Agent, Paying Agent or additional paying agent.

"*Agreed Security Principles*" means the agreed security principles set out in Schedule 3 hereto.

"*Asset Disposition*" means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases (other than operating leases entered into in the ordinary course of business), transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Parent or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction. Notwithstanding the preceding provisions of this definition, the following items shall not be deemed to be Asset Dispositions:

(1) a disposition by a Restricted Subsidiary to the Parent or by the Parent or a Restricted Subsidiary to a Restricted Subsidiary, *provided* that any Restricted Subsidiary that is not a Guarantor to which Collateral is disposed of (other than by way of an Investment pursuant to clause (1) of the definition of "Permitted Investment" by the Issuer or any Guarantor in a Restricted Subsidiary that is not a Guarantor) shall grant or maintain the Lien on such Collateral securing the Notes;

(2) a disposition of cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;

(3) a disposition of inventory, trading stock, security equipment or other equipment or assets in the ordinary course of business;

(4) a disposition of obsolete, damaged, retired, surplus or worn out equipment or assets or equipment, facilities or other assets that are no longer useful in the conduct of the business of the Parent and its Restricted Subsidiaries and any transfer, termination, unwinding or other disposition of hedging instruments or arrangements not for speculative purposes;

(5) transactions permitted under Section 5.01 or a transaction that constitutes a Change of Control;

(6) an issuance of Capital Stock by a Restricted Subsidiary to the Parent or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors or the issuance of directors' qualifying shares and shares issued to individuals as required by applicable law;

(7) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Board of Directors or an Officer of the Parent) of less than $10.0 million;

(8) any Restricted Payment that is permitted to be made, and is made, under Section 4.02, and the making of any Permitted Payment or Permitted Investment;

(9) the granting of Liens not prohibited by Section 4.03;

(10) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements or any sale of assets received by the Parent or a Restricted Subsidiary upon the foreclosure of a Lien granted in favor of the Parent or any Restricted Subsidiary;

(11) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, sub-licenses, leases or subleases of other property, in each case, in the ordinary course of business;

(12) foreclosure, condemnation, taking by eminent domain or any similar action with respect to any property or other assets;

(13) the sale or discount (with or without recourse, and on customary or commercially reasonable terms) of accounts receivable or notes receivable arising in the ordinary course of business, or the conversion or exchange of accounts receivable for notes receivable;

(14) sales or dispositions of receivables in connection with any factoring, receivables or securitization financing, including any Qualified Securitization Financing, or in the ordinary course of business;

(15) [Reserved];

(16) any disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Parent or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(17) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

(18) any disposition of assets to a Person who is providing services related to such assets, the provision of which have been or are to be outsourced by the Parent or any Restricted Subsidiary to such Person; *provided*, *however*, that the Board of Directors shall certify that in the opinion of the Board of Directors, the outsourcing transaction will be economically beneficial to the Parent and its Restricted Subsidiaries (considered as a whole); *provided further* that the fair market value of the assets disposed of, when taken together with all other dispositions made pursuant to this clause (18), does not exceed $25.0 million;

(19) an issuance of Capital Stock by a Restricted Subsidiary to the Parent or to another Restricted Subsidiary, an issuance or sale by a Restricted Subsidiary of Preferred Stock or redeemable Capital Stock that is permitted by Section 4.01 or an issuance of Capital Stock by the Parent pursuant to an equity incentive or compensation plan approved by the Board of Directors;

(20) sales, transfers or other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding agreements; *provided* that any cash or Cash Equivalents received in such sale, transfer or disposition is applied in accordance with Section 4.05;

(21) any disposition with respect to property built, owned or otherwise acquired by the Parent or any Restricted Subsidiary pursuant to customary sale and lease-back transactions, asset securitizations and other similar financings permitted by this Indenture; and

(22) any disposition of Capital Stock, properties or assets of Ferroatlántica de Venezuela (Ferroven), S.A. and Cuarzos Industriales de Venezuela, S.A.

"*Associate*" means (i) any Person engaged in a Similar Business of which the Parent or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (ii) any joint venture entered into by the Parent or any Restricted Subsidiary.

"*Bankruptcy Law*" means (a) the United States Bankruptcy Code of 1978, as amended, or any similar U.S. federal or state law for the relief of debtors and (b) any other bankruptcy, insolvency, liquidation or similar laws of any relevant jurisdiction that are of general application (including, without limitation, the laws of England and Wales relating to moratorium, bankruptcy, insolvency, receivership, winding up, liquidation, reorganization or relief of debtors), and in each case, any amendment to, succession to or change in any such law.

"*Board of Directors*" means (1) with respect to the Issuer or any corporation or other body corporate, the board of directors or managers, as applicable, of the corporation or other body corporate, or any duly authorized committee thereof; (2) with respect to any partnership, the board of directors or other governing body of the general partner of the partnership or any duly authorized committee thereof; and (3) with respect to any other Person, the board or any duly authorized committee of such Person serving a similar function. Whenever any provision of this Indenture requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors (excluding employee representatives, if any) on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval). The obligations of the "Board of Directors" of the Issuer under this Indenture may be exercised by the Board of Directors of a Restricted Subsidiary or a Parent Holdco pursuant to a delegation of powers of the Board of Directors of the Issuer.

"*Business Day*" means each day that is not a Saturday, Sunday or other day on which banking institutions in London, United Kingdom, New York, United States, Madrid, Spain, Amsterdam, the Netherlands or Dublin, Ireland are authorized or required by law to close.

"*Capital Stock*" of any Person means any and all shares of, rights to purchase, warrants or options for, or other equivalents of or partnership or other interests in (however designated), equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"*Capitalized Lease Obligations*" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes on the basis of IFRS (as in effect on the Issue Date for purposes of determining whether a lease is a capitalized lease). The amount of Indebtedness will be, at the time any determination is to be made, the amount of such obligation required to be capitalized on a balance sheet (excluding any notes thereto) prepared in accordance with IFRS, and the stated maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"*Cash Equivalents*" means:

(1) securities issued or directly and fully Guaranteed or insured by the United States or Canadian governments, a Permissible Jurisdiction, Switzerland or Norway or, in each case, any agency or instrumentality thereof (*provided* that the full faith and credit of such country or such member state is pledged in support thereof), having maturities of not more than two years from the date of acquisition;

(2) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof (a "*Deposit*") or cash in credit balance or deposit which are freely transferable or convertible within 90 days issued or held by any lender party to any ABL Facility or by any bank or trust company (a) if at any time since January 1, 2007 the Parent or any of its Subsidiaries held Deposits with such bank or trust company (or any branch or subsidiary thereof), (b) whose commercial paper is rated at least "A-3" or the equivalent thereof by S&P or at least "P-3" or the equivalent thereof by Moody's (or if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) or (c) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of $250 million;

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (1) and (2) entered into with any bank meeting the qualifications specified in clause (2) above;

(4) commercial paper rated at the time of acquisition thereof at least "A-3" or the equivalent thereof by S&P or "P-3" or the equivalent thereof by Moody's or carrying an equivalent rating by a Nationally Recognized Statistical Rating Organization, if both of the two named rating agencies cease publishing ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in any case maturing within one year after the date of acquisition thereof;

(5) readily marketable direct obligations issued by any state of the United States of America, any province or territory of Canada, a Permissible Jurisdiction, Switzerland or Norway or any political subdivision thereof, in each case, having one of the two highest rating categories obtainable from either Moody's or S&P (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of not more than two years from the date of acquisition;

(6) Indebtedness or preferred stock issued by Persons with a rating of "BBB-" or higher from S&P or "Baa3" or higher from Moody's (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of 12 months or less from the date of acquisition;

(7) bills of exchange issued in the United States, Canada, a Permissible Jurisdiction, Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(8) interests in investment funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (7) of this definition; and

(9) for purposes of clause (2) of the definition of "Asset Disposition", the marketable securities portfolio owned by the Parent and its Subsidiaries on the Issue Date.

"*Change of Control*" means the occurrence of any of the following:

(1) the Parent becoming aware that (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Issue Date), other than one or more Permitted Holders, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Issue Date), directly or indirectly, of 35% or more of the total voting power of the Voting Stock of the Parent and the Permitted Holders "beneficially own" directly or indirectly in the aggregate the same or a lesser percentage of the total voting power of the Voting Stock of the Parent than such other "person" or "group" of related persons; *provided* that for the purposes of this clause, (x) no Change of Control shall be deemed to occur by reason of the Parent becoming a Subsidiary of a Successor Parent; and (y) any Voting Stock of which any Permitted Holder is the "beneficial owner" (as so defined) shall not be included in any Voting Stock of which any such "person" or "group of related persons" is the "beneficial owner" (as so defined), unless such Permitted Holder is controlled by such "person" or "group" of related persons;

(2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation or other business combination transaction), in one or a series of related transactions, of all or substantially all of the assets of the Parent and its Restricted Subsidiaries taken as a whole to a Person, other than a Restricted Subsidiary or one or more Permitted Holders;

(3) the Parent ceases to directly or indirectly hold 100% of the Capital Stock of the Issuer; or

(4) the shareholders of the Parent or the Issuer approve any plan of liquidation or dissolution of the Parent or the Issuer.

Notwithstanding the foregoing, no "Change of Control" shall occur or deemed to occur by reason of:

(1) any enforcement of rights or exercise of remedies under the GVM Share Pledge, including any sale, transfer or other disposal or disposition of the shares in the Parent in connection therewith;

(2) any disposal by GVM of its shares in the Parent where the purpose of that transaction is to facilitate the repayment or discharge (in full or in part) of the GVM Loan and the proceeds of sale are promptly applied towards such repayment or discharge; or

(3) any mandatory offer (or analogous offer) required under the City Code on Takeovers and Mergers or any analogous regulation applied in any jurisdiction as a consequence of a transaction under limbs (1) or (2) above,

provided that, if any transaction under paragraphs (1) to (3) above occurs which, but for such paragraph(s), would be a "Change of Control" as a consequence of any Person or Persons (other than Tyrus) (x) acquiring any Voting Stock of the Parent or (y) being or becoming the "beneficial owner" of the voting power of any Voting Stock of the Parent (such Person(s), the "*Controlling Shareholder*") either:

(A) the Controlling Shareholder has, within 60 days of that transaction, and at its election:

(x) paid to the Holders, on a *pro rata* basis, a fee in an aggregate amount equal to the product of (i) the aggregate principal amount outstanding of the Notes then outstanding, (ii) 0.02 and (iii) the number of years (or part-thereof, with any part of a year calculated on the basis of the number of days divided by 360) from the payment date of such fee to June 30, 2025; or

(y) made an offer to all Holders to purchase one-third of the outstanding principal amount of the Notes then outstanding on a *pro rata* basis at a price equal to (A) in the first fifteen months after the Issue Date, 100% of the principal amount of such Notes plus accrued and unpaid interest to the date of such purchase or (B) at any time after the first fifteen months following the Issue Date, 101% of the principal amount of such Notes plus accrued and unpaid interest to the date of such purchase; or

(B) the Issuer, within 60 days of that transaction, has made an offer to all Holders to repurchase or purchase (as applicable), or has otherwise redeemed, one-third of the outstanding principal amount of the Notes then outstanding on a *pro rata* basis at a price equal to (A) in the first fifteen months after the Issue Date, 100% of the principal amount of such Notes plus accrued and unpaid interest to the date of such repurchase, purchase or redemption or (B) at any time after the fifteen months following the Issue Date, 101% of the principal amount of such Notes plus accrued and unpaid interest to the date of such repurchase, purchase or redemption, resulting in such repurchased, purchased or redeemed Notes being cancelled,

and *provided further* that, the Controlling Shareholder is not a Restricted Person.

"*Clearstream*" means Clearstream Banking, S.A., as currently in effect or any successor securities clearing agency.

"*Collateral*" means (a) the collateral that secures the Notes and the obligations under this Indenture pursuant to the Security Documents set forth in Schedule 2 to this Indenture and (b) any other collateral that secures the Notes and the obligations under this Indenture from time to time.

"*Commodity Hedging Agreements*" means, in respect of a Person, any commodity purchase contract, commodity futures or forward contract, commodities option contract or other similar contract (including commodities derivative agreements or arrangements), to which such Person is a party or a beneficiary.

"*Consolidated EBITDA*" for the period of the four most recent fiscal quarters ending prior to the relevant date of measurement for which internal consolidated financial statements are available, means, without duplication, the Consolidated Net Income for such period, plus the following to the extent deducted in calculating such Consolidated Net Income:

(1) Consolidated Interest Expense;

(2) Consolidated Income Taxes;

(3) consolidated depreciation expense;

(4) consolidated amortization or impairment expense;

(5) any expenses, charges or other costs related to any issuance of Capital Stock, listing of Capital Stock, Investment, acquisition (including amounts paid in connection with the acquisition or retention of one or more individuals comprising part of a management team retained to manage the acquired business and any expenses, charges or other costs related to deferred or contingent payments), disposition, recapitalization or the Incurrence, issuance, redemption or refinancing of any Indebtedness permitted by this Indenture or any amendment, waiver, consent or modification to any document governing any such Indebtedness (whether or not successful), in each case, as determined in good faith by the Board of Directors or an Officer of the Parent;

(6) any minority interest expense (whether paid or not) consisting of income attributable to minority equity interests of third parties in such period or any prior period or any net earnings, income or share of profit of any Associates, associated company or undertaking;

(7) other non-cash charges, write-downs or items reducing Consolidated Net Income (excluding any such non-cash charge, write-down or item to the extent it represents an accrual of or reserve for cash charges expected to be paid in any future period) or other items classified by the Parent as special, extraordinary, exceptional, unusual or nonrecurring items less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash expected to be paid in any future period);

(8) the proceeds of any business interruption insurance received or that become receivable during such period to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income;

(9) payments received or that become receivable with respect to, expenses that are covered by the indemnification provisions in any agreement entered into by such Person in connection with an acquisition to the extent such expenses were included in computing Consolidated Net Income;

(10) any Securitization Fees and discounts on the sale of accounts receivables in connection with any Qualified Securitization Financing representing, in the Parent's reasonable determination, the implied interest component of such discount for such period, and any gains (or losses) on the sale of accounts receivables, Securitization Assets and related assets in connection with a Qualified Securitization Financing;

(11) any extraordinary, one-off, non-recurring, exceptional or unusual gain, loss, expense or charge, including any charges or reserves in respect of any restructuring, redundancy, relocation, refinancing, integration or severance or other post-employment arrangements, signing, retention or completion bonuses, transaction costs (including costs related to any investments), acquisition costs, business optimization, system establishment, software or information technology implementation or development, costs related to governmental investigations and curtailments or modifications to pension or post-retirement benefits schemes, litigation or any asset impairment charges or the financial impacts of natural disasters (including fire, flood and storm and related events); and

(12) any one-time non-cash charges or any amortization or depreciation, in each case to the extent related to any acquisition of another Person or business or resulting from any reorganization or restructuring or Incurrence of Indebtedness involving the Parent or its Restricted Subsidiaries.

Unless otherwise specified, Consolidated EBITDA shall be determined on a *pro forma* basis, including the *pro forma* application of proceeds of Indebtedness being Incurred in connection with such determination, as per the most recent four fiscal quarters for which financial statements are available immediately preceding such determination.

"*Consolidated Income Taxes*" means taxes or other payments, including deferred Taxes, based on income, profits or capital of any of the Parent and its Restricted Subsidiaries whether or not paid, estimated, accrued or required to be remitted to any governmental authority.

"*Consolidated Interest Expense*" means, for any period (in each case, determined on the basis of IFRS), the consolidated net interest income/expense of the Parent and its Restricted Subsidiaries under IFRS, whether paid or accrued, plus or including (without duplication) any interest, costs and charges consisting of:

(1) interest expense attributable to Capitalized Lease Obligations;

(2) amortization of original issue discount but excluding amortization of debt issuance costs, fees and expenses and the expensing of any finance costs;

(3) non-cash interest expense;

(4) costs associated with Hedging Obligations (excluding amortization of fees or any non-cash interest expense attributable to the movement in mark-to-market valuation of such obligations);

(5) the product of (a) all dividends or other distributions in respect of all Disqualified Stock of the Parent and all Preferred Stock of any Restricted Subsidiary, to the extent held by Persons other than the Parent or a subsidiary of the Parent, multiplied by (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined national, state and local statutory tax rate of such Person, expressed as a decimal, as estimated in good faith by a responsible accounting or financial officer of the Parent;

(6) the consolidated interest expense that was capitalized during such period; and

(7) interest actually paid by the Parent or any Restricted Subsidiary under any Guarantee of Indebtedness or other obligation of any other Person,

minus (i) accretion or accrual of discounted liabilities other than Indebtedness, (ii) any expense resulting from the discounting of any Indebtedness in connection with the application of purchase accounting in connection with any acquisition, (iii) interest with respect to Indebtedness of any Holding Company of such Person appearing upon the balance sheet of such Person solely by reason of push-down accounting under IFRS and (iv) any Additional Amounts with respect to the Notes included in interest expense under IFRS or other similar tax gross up on any Indebtedness included in interest expense under IFRS; and excluding amortization of debt discount, premium, issuance costs, commissions, fees and expenses, any commissions, discounts, yield or other fees and charges related to any Qualified

Securitization Financing or other factoring, receivables or securitization financings that are non-recourse to the Parent or its Restricted Subsidiaries.

"*Consolidated Net Income*" means, for any period, the net income (loss) of the Parent and its Restricted Subsidiaries determined on a consolidated basis on the basis of IFRS; *provided, however*, that there will not be included in such Consolidated Net Income:

(1) subject to the limitations contained in clause (3) below, any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that the Parent's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed by such Person during such period to the Parent or a Restricted Subsidiary as a dividend or other distribution or return on investment or could have been distributed, as reasonably determined by an Officer (subject, in the case of a dividend or other distribution or return on investment to a Restricted Subsidiary, to the limitations contained in clause (2) below);

(2) [Reserved];

(3) any net gain (or loss) realized upon the sale or other disposition of any asset or disposed operations of the Parent or any Restricted Subsidiaries (including pursuant to any sale/leaseback transaction) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by an Officer or the Board of Directors of the Parent);

(4) [Reserved];

(5) the cumulative effect of a change in accounting principles;

(6) any non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards, any non-cash deemed finance charges in respect of any pension liabilities or other provisions, any non-cash net after tax gains or losses attributable to the termination or modification of any employee pension benefit plan and any charge or expense relating to any payment made to holders of equity based securities or rights in respect of any dividend sharing provisions of such securities or rights to the extent such payment was made pursuant to Section 4.02;

(7) all deferred financing costs written off and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness or Hedging Obligations and any net gain (loss) from any write-off or forgiveness of Indebtedness;

(8) any unrealized gains or losses in respect of Hedging Obligations or other financial instruments or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value or changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations;

(9) any unrealized foreign currency transaction gains or losses in respect of Indebtedness or other obligations of the Parent or any Restricted Subsidiary denominated in a currency other than the functional currency of such Person and any unrealized foreign exchange gains or losses resulting from re-measuring assets and liabilities denominated in foreign currencies;

(10) any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Parent or any Restricted Subsidiary owing to the Parent or any Restricted Subsidiary;

(11) any one-time non-cash charges or any amortization or depreciation, in each case to the extent related to any acquisition of another Person or business; and

(12) any goodwill or other intangible asset impairment charge or write-off or write-down.

"*Consolidated Net Leverage*" means the aggregate outstanding Indebtedness of the Parent and its Restricted Subsidiaries (excluding Hedging Obligations) as of the relevant date of calculation minus cash and cash equivalents at such date, in each case on a consolidated basis and in accordance with IFRS.

"*Consolidated Net Leverage Ratio*" means, as of any date of determination, the ratio of (x) Consolidated Net Leverage at such date to (y) the aggregate amount of Consolidated EBITDA for the period of the four most recent fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Parent are available.

In addition, for purposes of calculating the Consolidated Net Leverage Ratio:

(1) acquisitions and Investments (each, a "*Purchase*") that have been made by the Parent or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Subsidiaries which are Restricted Subsidiaries acquired by the Parent or any of its Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Subsidiaries which are Restricted Subsidiaries, during the reference period or subsequent to such reference period and on or prior to the date on which the calculation of the Consolidated Net Leverage Ratio is made (the "*Calculation Date*"), or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by a responsible accounting or financial officer of the Parent) as if they had occurred on the first day of the reference period; provided that if definitive documentation has been entered into with respect to a Purchase that is part of the transaction causing a calculation to be made hereunder, Consolidated EBITDA for such period will be calculated after giving pro forma effect to such Purchase as if such Purchase had occurred on the first day of such period, even if the Purchase has not yet been consummated as of the date of determination;

(2) the Consolidated EBITDA (whether positive or negative) attributable to discontinued operations, as determined in accordance with IFRS, and operations, businesses or group of assets constituting a business or operating unit (and ownership interests therein) disposed of during the reference period or subsequent to such reference period and prior to the Calculation Date, will be excluded on a *pro forma* basis as if such disposition occurred on the first day of such period;

(3) the Consolidated Interest Expense attributable to discontinued operations, as determined in accordance with IFRS, and operations, businesses or group of assets constituting a business or operating unit (and ownership interests therein) disposed of during the reference period or subsequent to such reference period and prior to the Calculation Date, will be excluded on a *pro forma* basis as if such disposition occurred on the first day of such period, but only to the extent that the obligations giving rise to such Consolidated Interest Expense will not be obligations of the Parent or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such reference period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such reference period; and

(6) if any Indebtedness is not denominated in the Parent's functional currency, that Indebtedness for purposes of the calculation of Consolidated Net Leverage shall be treated in accordance with IFRS.

For the purposes of the definitions of Consolidated EBITDA, Consolidated Income Taxes, Consolidated Interest Expense and Consolidated Net Income, calculations will be determined in accordance with the terms set forth above.

"*Consolidated Net Tangible Assets*" means, as of any date of determination, the total amount of assets of the Parent on a consolidated basis (including deferred pension cost and deferred tax assets (without reducing such deferred tax assets by deferred tax liabilities), and less applicable reserves and other properly deductible items), after deducting therefrom:

(1) all current liabilities (excluding any Indebtedness or obligations under capital leases classified as a current liability); and

(2) all goodwill, trade names, trademarks, patents, unamortized debt discount and financing costs and all similar intangible assets,

all as set forth in the Parent's most recent consolidated balance sheet internally available (but, in any event, as of a date within 150 days of the date of determination) and computed in accordance with IFRS.

"*Contingent Obligations*" means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that does not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*"), including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(A) for the purchase or payment of any such primary obligation; or

(B) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"*Credit Facility*" means, with respect to the Parent or any of its Subsidiaries, one or more debt facilities, arrangements, instruments or indentures (including any ABL Facility or commercial paper facilities and overdraft facilities) with banks, institutions or investors providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), notes, letters of credit or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or other banks, institutions or investors and whether provided under any ABL Facility or one or more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term "Credit Facility" shall include any agreement or instrument (1) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Parent as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.

"*Currency Agreement*" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency futures contract, currency option contract, currency derivative or other similar agreement to which such Person is a party or beneficiary.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Designated Non-Cash Consideration*" means the fair market value (as determined in good faith by the Board of Directors or an Officer of the Parent) of non-cash consideration received by the Parent or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash, Cash Equivalents or Temporary Cash Investments received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 4.05.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, in each case on or prior to the date that is 90 days after the earlier of (a) the Stated Maturity of the Notes or (b) the date on which there are no Notes outstanding. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the issuer thereof to repurchase such Capital Stock upon the occurrence of a Change of Control or an Asset Disposition will not constitute Disqualified Stock if the terms of such Capital Stock provide that the issuer thereof may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.02. For purposes hereof, the amount of Disqualified Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value to be determined as set forth herein. Only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock.

"*Dollar Equivalent*" means, with respect to any monetary amount in a currency other than U.S. dollars, at any time of determination thereof by the Parent, the amount of U.S. dollars obtained by converting such currency other than U.S. dollars involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable currency other than U.S. dollars as published in *The Financial Times* in the "Currency Rates" section (or, if *The Financial Times* is no longer published, or if such information is no longer available in *The Financial Times,* such source as may be selected in good faith by the Board of Directors or an Officer of the Parent) on the date of such determination.

"*EBITDA*" for a Person for the period of the four most recent fiscal quarters ending prior to the relevant date of measurement for which internal consolidated financial statements are available, means, without duplication earnings before interest, tax, depreciation and amortization, calculated on a basis consistent with Consolidated EBITDA.

"*Equity Offering*" means (x) a sale of Capital Stock of a Parent Holdco, the Parent or a Restricted Subsidiary (other than Disqualified Stock and other than offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions and other than offerings to the Parent or any Restricted Subsidiary), or (y) the sale of Capital Stock or other securities by any Person (other than to the Parent or a Restricted Subsidiary), the proceeds of which are contributed to the equity (other than through the issuance of Disqualified Stock) of the Parent or any of its Restricted Subsidiaries.

"*Escrowed Proceeds*" means the proceeds from the offering of any debt securities or other Indebtedness paid into escrow accounts with an independent escrow agent on the date of the applicable offering or Incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow accounts upon satisfaction of certain conditions or the occurrence of certain events. The term "*Escrowed Proceeds*" shall include any interest earned on the amounts held in escrow.

"*Euroclear*" means Euroclear Bank S.A./N.V.

"*European Union*" means all members of the European Union as of January 1, 2021.

"*Excess ABL Debt*" has the meaning given to it under the ABL Intercreditor Agreement.

"*Excess Junior Note Debt*" has the meaning given to it under the ABL Intercreditor Agreement.

"*Excess Senior Note Debt*" has the meaning given to it under the ABL Intercreditor Agreement.

"*Exchange Act*" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"*Existing A/R Facility*" means the facilities available under two Factoring Agreements dated as of October 2, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among, *inter alios*, Ferropem SAS, Grupo Ferroatlantica S.A, and La Banque Postale Leasing & Factoring.

"*Existing Notes*" means the $350.0 million aggregate principal amount $9^{3}/_{8}$% Senior Notes due 2022, issued on February 15, 2017.

"*fair market value*" wherever such term is used in this Indenture (except as otherwise specifically provided in this Indenture), may be conclusively established by means of an Officer's Certificate or a resolution of the Board of Directors of the Parent setting out such fair market value as determined by such Officer or such Board of Directors in good faith.

"*Fairness Opinion*" means a written opinion of an accounting, appraisal, or investment banking firm of international standing, or other recognized independent expert with experience appraising the terms and conditions of the type of transaction or series of related transactions for which an opinion is required, stating that such transaction or series of related transactions is on terms not less favorable than might have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate.

"*Fitch*" means Fitch Ratings, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Ratings Organization.

"Fixed Charge Coverage Ratio" means, as of any date of determination, the ratio of (x) the aggregate amount of Consolidated EBITDA of such Person for the period of the four most recent fiscal quarters prior to the date of such determination for which internal consolidated financial statements are available to (y) the Fixed Charges of such Person for such four fiscal quarters.

In the event that the specified Person or any of its Restricted Subsidiaries Incurs, assumes, guarantees, repays, repurchases, redeems, defeases, retires, extinguishes or otherwise discharges any Indebtedness (other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the four-quarter period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Calculation Date*"), then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect (as determined in good faith by a responsible accounting or financial officer of such Person) to such Incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance, retirement, extinguishment or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter period; *provided, however*, that the *pro forma* calculation of Fixed Charges shall not give effect to (i) any Indebtedness Incurred on the Calculation Date pursuant to the provisions described in Section 4.01(b) or (ii) the discharge on the Calculation Date of any Indebtedness to the extent that such discharge results from the proceeds of Indebtedness Incurred pursuant to the provisions described in Section 4.01(b).

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) Purchases that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or by any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Subsidiaries which are Restricted Subsidiaries, and including all related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given *pro forma* effect (as determined in good faith by a responsible accounting or financial officer of such Person) as if they had occurred on the first day of the four-quarter reference period; *provided* that, if definitive documentation has been entered into with respect to a Purchase that is part of the transaction causing a calculation to be made hereunder, Consolidated EBITDA for such period will be calculated after giving *pro forma* effect to such Purchase as if such Purchase had occurred on the first day of such period, even if the Purchase has not yet been consummated as of the date of determination;

(2) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with IFRS, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period;

(6) if any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Indebtedness); and

(7) Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Parent to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with IFRS.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the Consolidated Interest Expense of such Person for such period; plus

(2) all dividends, whether paid or accrued and whether or not in cash, on or in respect of all Disqualified Stock of the Parent or any series of Preferred Stock of any Restricted Subsidiary, other than dividends on equity interests payable to the Parent or a Restricted Subsidiary.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part),

provided, however, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"*Government Loan*" means a loan granted by the government or any department, division, agency or any other instrumentality of a government.

"*Government Obligations*" means any security that is (1) a direct obligation of the United States government, for the payment of which the full faith and credit of the United States government is pledged or (2) an obligation of a person controlled or supervised by and acting as an agency or instrumentality of the United States government the payment of which is unconditionally Guaranteed as a full faith and credit obligation by the United States, which, in either case under the preceding clause (1) or (2), is not callable or redeemable at the option of the issuer thereof.

"*Guarantor*" means any Person that executes a Note Guarantee in accordance with the provisions of this Indenture from time to time, and their respective successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture.

"*GVM*" means Grupo Villar Mir S.A.U. and its successors or assigns.

"*GVM Share Pledge*" means any share pledge or charge or other similar security over the shares in the Parent held by GVM granted by GVM in support of or as collateral for its obligations under any GVM Loan from time to time.

"*GVM Loan*" means any financing provided by Tyrus to GVM or owing by GVM to Tyrus, from time to time.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Hedging Agreement.

"*Holder*" means each Person in whose name the Notes are registered on the Registrar's books.

"*Holding Company*" means, in relation to any Person, any other Person in respect of which it is a Subsidiary.

"*IFRS*" means International Financial Reporting Standards (formerly International Accounting Standards) endorsed from time to time by the European Union or any variation thereof with which the Parent or its Restricted Subsidiaries are, or may be, required to comply. All ratios and calculations contained in this Indenture shall be computed in accordance with IFRS.

"*Incur*" means issue, create, assume, enter into any Guarantee of, incur or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and the terms "*Incurred*" and "*Incurrence*" have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only be "Incurred" at the time any funds are borrowed thereunder.

"*Indebtedness*" means, with respect to any Person on any date of determination (without duplication):

(1) the principal of indebtedness of such Person for borrowed money;

(2) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have been reimbursed) (except to the extent such reimbursement obligations relate to trade payables or other obligations not constituting Indebtedness and such obligations are satisfied within 30 days of Incurrence), in each case only to the extent that the underlying obligation in respect of which the instrument was issued would be treated as Indebtedness;

(4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), where the deferred payment is arranged primarily as a means of raising finance, which purchase price is due more than one year after the date of placing such property in service or taking final delivery and title thereto;

(5) Capitalized Lease Obligations of such Person;

(6) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Board of Directors or an Officer of the Parent) and (b) the amount of such Indebtedness of such other Persons;

(8) Guarantees by such Person of the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and

(9) to the extent not otherwise included in this definition, net obligations of such Person under Currency Agreements, Interest Rate Agreements and Commodity Hedging Agreements (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The term "Indebtedness" shall not include (i) any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under IFRS as in effect on the Issue Date, (ii) prepayments of deposits received from clients or customers in the ordinary course of business, (iii) obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the Issue Date or in the ordinary course of business, (iv) any asset retirement obligations, or (v) obligations under or in respect of Qualified Securitization Financings.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amounts of funds borrowed and then outstanding. The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in this Indenture, and (other than with respect to letters of credit or Guarantees or Indebtedness specified in clause (7) or (8) above) shall equal the amount thereof that would appear on a balance sheet of such Person (excluding any notes thereto) prepared on the basis of IFRS.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

(i) Contingent Obligations Incurred in the ordinary course of business and accrued liabilities Incurred in the ordinary course of business that are not more than 90 days past due;

(ii) in connection with the purchase by the Parent or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided*, *however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter;

(iii) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes;

(iv) any "parallel debt" obligations (including any Guarantees with respect thereof); or

(v) any Subordinated Shareholder Funding.

"*Independent Financial Advisor*" means an investment banking or accounting firm of international standing or any third party appraiser of international standing; *provided*, *however*, that such firm or appraiser is not an Affiliate of the Parent.

"*Initial Notes Reduction Amount*" means the aggregate principal amount of the Additional Notes issued on the Issue Date in excess of $20.0 million.

"*Intercreditor Agreement*" means the Intercreditor Agreement dated on or about the Issue Date, among, *inter alios*, the Trustee, the Security Agent, the Parent, the Issuer, and the Guarantors, as amended from time to time.

"*Interest Rate Agreement*" means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement to which such Person is party or a beneficiary.

"Investment" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any advance, loan or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any Person in the ordinary course of business, and excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the Incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet (excluding any notes thereto) prepared on the basis of IFRS; *provided*, *however*, that endorsements of negotiable instruments and documents in the ordinary course of business will not be deemed to be an Investment. If the Parent or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Parent or any Restricted Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment equal to the fair market value of the Capital Stock of such Subsidiary not sold or disposed of in an amount determined as provided in Section 4.02(d).

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Parent's option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

"*Investment Grade Securities*" means:

(1) securities issued or directly and fully Guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities issued or directly and fully guaranteed or insured by a Permissible Jurisdiction, Switzerland or Norway or any agency or instrumentality thereof (other than Cash Equivalents);

(3) debt securities or debt instruments with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's or the equivalent of such rating by such rating organization or, if no rating of Moody's or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization, but excluding any debt securities or instruments constituting loans or advances among the Parent and its Subsidiaries;

(4) investments in any fund that invests exclusively in investments of the type described in clauses (1), (2) and (3) above which fund may also hold cash and Cash Equivalents pending investment or distribution; and

(5) any investment in repurchase obligations with respect to any securities of the type described in clauses (1), (2) and (3) above which are collateralized at par or over.

"*Investment Grade Status*" shall occur when all of the Notes receive both of the following:

(1) a rating of "BBB-" or higher from Fitch; and

(2) a rating of "Baa3" or higher from Moody's,

or the equivalent of such rating by either such rating organization or, if no rating of Moody's or Fitch then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization.

"*Issue Date*" means May 17, 2021.

"*Issuer*" means Ferroglobe Finance Company, PLC.

"*Junior Note Obligations*" has the meaning given to it under the ABL Intercreditor Agreement.

"*Lien*" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"*Limited Condition Acquisition*" means any acquisition, including by way of merger, amalgamation or consolidation, by the Parent or one or more of its Restricted Subsidiaries the consummation of which is not conditioned upon the availability of, or on obtaining, third-party financing; *provided* that Consolidated EBITDA, other than for purposes of calculating any ratios in connection with the Limited Condition Acquisition and the related transactions, shall not include any Consolidated EBITDA of or attributable to the target company or assets involved in any such Limited Condition Acquisition unless and until the closing of such Limited Condition Acquisition shall have actually occurred.

"*Lock-Up Agreement*" means the lock-up agreement dated March 27, 2021 (as amended, extended, renewed, restated, supplemented, modified or replaced), between, among others, the Parent and the Original Consenting Noteholders (as defined therein), to facilitate the restructuring of the Parent and its subsidiaries.

"*Management Advances*" means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants of any Parent Holdco, the Parent or any Restricted Subsidiary:

(1) (a) in respect of travel, entertainment or moving related expenses incurred in the ordinary course of business or (b) for purposes of funding any such person's purchase of Capital Stock of the Parent, its Subsidiaries or any Parent Holdco with (in the case of this sub-clause (b)) the approval of the Board of Directors; or

(2) in respect of moving related expenses incurred in connection with any closing or consolidation of any facility or office.

"*Material Company*" means the Parent and any Restricted Subsidiary whose total assets, sales or EBITDA on a standalone basis represents 5% of consolidated total assets, consolidated sales or Consolidated EBITDA (excluding intra-group items and investments in Subsidiaries) as of the relevant test date under Section 4.07(c).

"*Moody's*" means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"*Nationally Recognized Statistical Rating Organization*" means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) under the Exchange Act.

"*Net Available Cash*" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

(1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses incurred, and all Taxes paid or required to be paid or accrued as a liability under IFRS (after taking into account any available tax credits or deductions and any Tax Sharing Agreements), as a consequence of such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law, be repaid out of the proceeds from such Asset Disposition;

(3) all distributions and other payments required to be made to minority interest holders (other than any Parent Holdco, the Parent or any of their respective Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Disposition; and

(4) the deduction of appropriate amounts required to be provided by the seller as a reserve, on the basis of IFRS, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Parent or any Restricted Subsidiary after such Asset Disposition.

"*Net Cash Proceeds*", with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any Tax Sharing Agreements).

"*Note Guarantee*" means the Guarantee by any Guarantor of the Issuer's obligations under this Indenture and the Notes.

"*Note Priority Collateral*" has the meaning given to it under the ABL Intercreditor Agreement.

"*Notes Documents*" means the Notes (including Additional Notes), this Indenture, the Security Documents, the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreements.

"*Officer*" means, with respect to any Person, (1) any member of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an "Officer" for the purposes of this Indenture by the Board of Directors of such Person. The obligations of an "Officer of the Parent" may be exercised by the Officer of any Restricted Subsidiary who has been delegated such authority by the Board of Directors of the Parent.

"*Officer's Certificate*" means, with respect to any Person, a certificate signed by one Officer of such Person.

"*Opinion of Counsel*" means a written opinion from legal counsel reasonably satisfactory to the Trustee. The counsel may be an employee of or counsel to the Parent or its Subsidiaries.

"*Parent*" means Ferroglobe PLC or any other Successor Company in accordance with this Indenture.

"*Parent Holdco*" means any Person of which the Parent at any time is or becomes a Subsidiary after the Issue Date and any holding companies established by any Permitted Holder for purposes of holding its investment in the Parent.

"*Pari Passu Indebtedness*" means Indebtedness of the Issuer or any Guarantor which does not constitute Subordinated Indebtedness.

"*Paying Agent*" means any Person authorized by the Parent to pay the principal of (and premium, if any) or interest on any Note on behalf of the Parent, which shall include the Paying Agent.

"*Permissible Jurisdiction*" means any member state of the European Union (excluding Greece) and the United Kingdom.

"*Permitted Collateral Liens*" means:

(1) Liens on the Collateral to secure the Reinstated Notes, including any Guarantee of such Reinstated Notes, and any Refinancing Indebtedness in respect thereof (and any Refinancing Indebtedness in respect of Refinancing Indebtedness); *provided* that each of the parties thereto will have entered into the Intercreditor Agreement, the ABL Intercreditor Agreement or an Additional Intercreditor Agreement;

(2) Liens on the Collateral that are described in one or more of clauses (2), (3), (4), (5), (6), (8), (9), (10), (11), (12), (13), (15), (17), (18), (19), (20), (21), (22), (24), (27), (28) and (29), of the definition of "Permitted Liens";

(3) Liens on the Collateral to secure any Indebtedness (including any Additional Notes) that is permitted to be Incurred under (x) Section 4.01(a), and (y) Section 4.01(b)(xi) and any Refinancing Indebtedness in respect of any of the foregoing (and any Refinancing Indebtedness in respect of Refinancing Indebtedness);

(4) Liens on the Collateral to secure any Indebtedness that is permitted to be Incurred under clauses (i), (ii) (in the case of clause (ii), to the extent such Guarantee is in respect of Indebtedness otherwise permitted to be secured and specified in clause (3) and this clause (4) of the definition of "Permitted Collateral Liens"), (iv)(A), (vi), (vii) and (xiii) of Section 4.01(b) and any Refinancing Indebtedness in respect of any of the foregoing (and any Refinancing Indebtedness in respect of Refinancing Indebtedness); and

(5) any Lien securing Indebtedness (including any Guarantee thereof) on a basis junior to the Notes,

provided, *however*, in the case of clauses (3), (4) and (5) above, that:

(A) any such Indebtedness is subject to the Intercreditor Agreement or to an Additional Intercreditor Agreement and, if incurred under any ABL Facility, is subject to the ABL Intercreditor Agreement or to an Additional Intercreditor Agreement with respect to such ABL Facility; and

(B) the Collateral securing such Indebtedness shall also secure the Notes or the Note Guarantees on a senior or *pari passu* basis; *provided* that (I) Indebtedness that is Incurred under clauses (i) (to the extent such Indebtedness does not constitute an ABL Facility) and (iv)(A) (and any refinancing and subsequent refinancings thereof covered under (iv)(D)) of Section 4.01(b) may receive priority with respect to distributions of proceeds of any enforcement of Collateral, in which case such Indebtedness shall constitute "Super Senior Liabilities" under the Intercreditor Agreement and (II) Indebtedness incurred under Section 4.01(b)(i) (to the extent such Indebtedness constitutes an ABL Facility) shall constitute "ABL Obligations" under the ABL Intercreditor Agreement.

For purposes of determining compliance with this definition, in the event that a Permitted Collateral Lien meets the criteria of one or more of the categories of Permitted Collateral Liens described above, the Issuer will be permitted to classify such Permitted Collateral Lien on the date of its Incurrence and reclassify such Permitted Collateral Lien at any time and in any manner that complies with this definition.

"*Permitted Holders*" means, collectively, (i) Grupo Villar Mir, S.A.U., (ii) members of the senior management team of the Parent as of the Issue Date, (iii) Alan Kestenbaum and (iv) any Related Person of any Persons specified in clause (i) to (iii). Any person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"*Permitted Investment*" means (in each case, by the Parent or any of its Restricted Subsidiaries):

(1) Investments in (a) a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Parent or (b) a Person that is engaged in any Similar Business (including the Capital Stock of any such Person) and such Person will, upon the making of such Investment, become a Restricted Subsidiary; *provided* that the aggregate of Investments in Restricted Subsidiaries that are not Guarantors made pursuant to this clause (1) and clause (2) of this definition by the Issuer and the Guarantors shall not exceed $10.0 million outstanding at any one time;

(2) Investments in another Person if such Person is engaged in any Similar Business and as a result of such Investment such other Person is merged, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, the Parent or a Restricted Subsidiary; *provided* that the aggregate of Investments in Restricted Subsidiaries that are not Guarantors made pursuant to this clause (2) and clause (1) of this definition by the Issuer and the Guarantors shall not exceed $10.0 million outstanding at any one time;

(3) Investments in cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;

(4) Investments in receivables owing to the Parent or any Restricted Subsidiary created or acquired in the ordinary course of business;

(5) Investments in payroll, travel, relocation, entertainment and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) Management Advances and any advances or loans not to exceed $10.0 million at any one time outstanding to any management equity plan or stock option plan or any other management or employee benefit or incentive plan or unit trust or the trustees of any such plan or trust to pay for the purchase or other acquisition for value of Capital Stock (other than Disqualified Stock) of the Parent or a Parent Holdco;

(7) Investments in Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Parent or any Restricted Subsidiary, or as a result of foreclosure, perfection

or enforcement of any Lien, or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement including upon the bankruptcy or insolvency of a debtor;

(8) Investments made as a result of the receipt of non-cash consideration from a sale or other disposition of property or assets, including an Asset Disposition, in each case, that was made in compliance with Section 4.05;

(9) Investments in existence on, or made pursuant to legally binding commitments in existence on, the Issue Date, and any extension, modification or renewal of any such Investment; *provided* that the amount of the Investment may be increased (a) as required by the terms of the Investment as in existence on the Issue Date or (b) as otherwise permitted under this Indenture;

(10) Currency Agreements, Interest Rate Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with Section 4.01;

(11) [Reserved];

(12) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Section 4.03;

(13) any Investment to the extent made using Capital Stock of the Parent (other than Disqualified Stock), or Capital Stock of any Parent Holdco as consideration;

(14) any transaction to the extent constituting an Investment that is permitted and made in accordance with Section 4.06(b) (except those described in clauses (b)(i), (b)(iii), (b)(viii), (b)(ix) and (b)(xii) of Section 4.06);

(15) Guarantees of Indebtedness of the Parent or any of its Restricted Subsidiaries not prohibited by Section 4.01 and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business;

(16) [Reserved];

(17) Investments in loans under any ABL Facility, the Existing Notes (including any related additional notes), the Reinstated Notes (including any related additional notes), the Notes and any Additional Notes;

(18) Investments acquired after the Issue Date as a result of the acquisition by the Parent or any of its Restricted Subsidiaries of another Person, including by way of a merger, amalgamation or consolidation with or into the Parent or any of its Restricted Subsidiaries in a transaction that is not prohibited by Section 5.01 to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(19) Investments in licenses, concessions, authorizations, franchises, permits or similar arrangements that are related to the Parent's or any Restricted Subsidiary's business; and

(20) Investments made in connection with any Qualified Securitization Financing, including Investments in funds held in accounts required by the arrangements governing such Qualified Securitization Financing or any related Indebtedness.

"*Permitted Joint Venture*" means any entity formed for purposes of implementing the joint venture agreement, dated as of December 20, 2016, among Grupo FerroAtlántica, S.A.U., Silicio FerroSolar, S.L.U., FerroAtlántica, S.A., Blue Power Corporation, S.L. and Aurinka Photovoltaic Group, S.L., as the same may be amended, extended or otherwise modified from time to time.

"*Permitted Liens*" means, with respect to any Person:

(1) Liens on assets or property of any Restricted Subsidiary that is not a Guarantor securing Indebtedness of such Restricted Subsidiary that is not a Guarantor;

(2) pledges, deposits or Liens under workmen's compensation laws, unemployment insurance laws, social security laws or similar legislation, or insurance related obligations (including pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements), or in connection with bids, tenders, completion guarantees, contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure surety, indemnity, judgment, appeal or performance bonds, guarantees of government contracts (or other similar bonds, instruments or obligations), or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case Incurred in the ordinary course of business;

(3) Liens imposed by law, including carriers', warehousemen's, mechanics', landlords', materialmens' and repairmen's or other similar Liens, in each case for sums not yet overdue for a period of more than 60 days or that are bonded or being contested in good faith by appropriate proceedings;

(4) Liens for taxes, assessments or other governmental charges not yet delinquent or which are being contested in good faith by appropriate proceedings; *provided* that appropriate reserves required pursuant to IFRS have been made in respect thereof;

(5) Liens in favor of issuers of surety, performance or other bonds, guarantees or letters of credit or bankers' acceptances or similar arrangements (not issued to support Indebtedness for borrowed money) issued pursuant to the request of and for the account of the Parent or any Restricted Subsidiary, in each case in the ordinary course of its business;

(6) encumbrances, ground leases, easements (including reciprocal easement agreements), survey exceptions, or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Parent and its Restricted Subsidiaries or to the ownership of its properties which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Parent and its Restricted Subsidiaries;

(7) Liens on assets or property of the Parent or any Restricted Subsidiary securing Hedging Obligations permitted under this Indenture relating to Indebtedness permitted to be Incurred under this Indenture and which is secured by a Lien on the same assets or property that secure such Indebtedness;

(8) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights), in each case entered into in the ordinary course of business;

(9) Liens arising out of judgments, decrees, orders or awards not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(10) Liens on assets or property of the Parent or any Restricted Subsidiary for the purpose of securing Capitalized Lease Obligations or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing other Indebtedness Incurred to finance or refinance the acquisition, improvement or construction of, assets or property acquired or constructed in the ordinary course of business; *provided* that (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under Section 4.01(b)(vii) and (b) any such Lien may not extend to any assets or property of the Parent or any Restricted Subsidiary other than assets or property acquired, improved, constructed or leased with the proceeds of such Indebtedness and any improvements or accessions to such assets and property;

(11) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies (including any Liens or right of set-off arising under the general banking conditions (*algemene bankvoorwaarden*) in respect of costs incurred in relation to administering the respective bank accounts) as to deposit accounts or other funds maintained with a depositary or financial institution;

(12) Liens arising from Uniform Commercial Code financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Parent and its Restricted Subsidiaries in the ordinary course of business;

(13) Liens existing on, or provided for or required to be granted under written agreements existing on, the Issue Date;

(14) [Reserved];

(15) (i) Liens on assets or property of the Issuer or any Guarantor securing Indebtedness or other obligations of the Issuer or such Guarantor owing to the Issuer or any Guarantor, or (ii) Liens in favor of the Issuer or any Guarantor;

(16) Liens (other than Permitted Collateral Liens) securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under this Indenture; *provided* that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;

(17) any interest or title of a lessor under any Capitalized Lease Obligation or operating lease;

(18) (a) mortgages, liens, security interest, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Parent or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

(19) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of, or assets owned by, any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(20) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(21) Liens arising under general business conditions in the ordinary course of business, including without limitation the general business conditions of any bank or financial institution with whom the Parent or any of its Restricted Subsidiaries maintains a banking relationship in the ordinary course of business (including arising by reason of any treasury or cash management, cash pooling, netting or set-off arrangement or other trading activities);

(22) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(23) [Reserved];

(24) any security granted over the marketable securities portfolio described in clause (9) of the definition of "Cash Equivalents" in connection with the disposal thereof to a third party;

(25) (a) Liens created for the benefit of or to secure, directly or indirectly, the Notes and the Note Guarantees, and the Reinstated Notes and the guarantees of the Reinstated Notes as of the Transaction Effective Date, (b) Liens securing Indebtedness Incurred under Section 4.01(b)(i) (other than an ABL Facility); *provided* that (i) any Government Loan incurred pursuant to Section 4.01(b)(i) prior to the Transaction Effective Date shall be unsecured, and (ii) any Qualified Securitization Financing (other than an ABL Facility) incurred pursuant to Section 4.01(b)(i) shall not be secured by the Collateral and (c) Liens in respect of property and assets securing Indebtedness if the recovery in respect of such Liens is subject to loss-sharing or sharing of recoveries as among the Holders of the Notes and the creditors of such Indebtedness;

(26) [Reserved];

(27) Liens on (a) Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) or (b) on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in escrow accounts or similar arrangement to be applied for such purpose;

(28) limited recourse Liens in respect of the ownership interests in, or assets owned by the Permitted Joint Venture and any joint ventures which are not Restricted Subsidiaries securing obligations of such joint ventures; and

(29) Liens on Securitization Assets and related assets incurred in connection with any Qualified Securitization Financing.

"*Person*" means any individual, corporation, other body corporate, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

"*Preferred Stock*", as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"*Public Debt*" means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (1) a public offering registered under the Securities Act or (2) a private placement to institutional investors that is underwritten for resale in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC for public resale.

"*Purchase Money Obligations*" means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

"*Qualified Securitization Financing*" means any financing pursuant to which the Parent or any Restricted Subsidiary may sell, convey or otherwise transfer to any other Person or grant a security interest in any accounts receivable (and related assets) in an aggregate principal amount equivalent to the fair market value of such accounts receivable (and related assets) of the Parent or any Restricted Subsidiary; *provided* that (a) the financing terms, covenants, events of default and other provisions applicable to such financing shall be in the aggregate economically fair and reasonable to the Parent and its Restricted Subsidiaries and all sales of accounts receivable (and related assets) are made on market terms (each as determined in good faith by the board of directors or a member of senior management of the Parent) at the time such financing is entered into and (b) such financing shall be non-recourse to the Parent and the Restricted Subsidiaries, except to the extent of any Securitization Repurchase Obligation or to the limited extent customary for such transactions.

"*refinance*" means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms "refinances", "refinanced" and "refinancing" as used for any purpose in this Indenture shall have a correlative meaning.

"*Refinancing Indebtedness*" means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the date of this Indenture or Incurred in compliance with this Indenture (including Indebtedness of the Issuer that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of the Issuer or another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; *provided*, *however*, that:

(1) if the Indebtedness being refinanced constitutes Subordinated Indebtedness, the Refinancing Indebtedness has a final stated maturity at the time such Refinancing Indebtedness is Incurred that is the same as or later than the final stated maturity of the Indebtedness being refinanced or, if shorter, the Notes;

(2) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and costs, expenses and fees Incurred in connection therewith);

(3) if the Indebtedness being refinanced is expressly subordinated to the Notes and the Reinstated Notes, such Refinancing Indebtedness is subordinated to the Notes and the Reinstated Notes on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being refinanced,

provided, *however*, that Refinancing Indebtedness shall not include Indebtedness of a Restricted Subsidiary that is not the Issuer or a Guarantor that refinances Indebtedness of the Issuer or a Guarantor.

"*Reinstated Notes*" means the senior secured notes issued in connection with an Exchange Offer and Covenant Strip or a Scheme (each as defined in the Lock-Up Agreement).

"*Related Fund*" means:

(a) in relation to a fund (the "*First Fund*"), a fund which is managed or advised by the same investment manager or advisor as the First Fund or, if it is managed by a different investment manager or adviser, a fund whose investment manager or advisor is an Affiliate of the investment manager or advisor of the First Fund;

(b) in relation to any other person, any fund in respect of which such person or an Affiliate of such person is investment manager or investment adviser; and

(c) any Affiliate of any fund described in sub-paragraphs (a) or (b) above.

"*Related Person*" with respect to any Permitted Holder, means:

(1) any controlling equity holder, majority (or more) owned Subsidiary or partner or member of such Person; or

(2) in the case of an individual, any spouse, family member or relative of such individual, any trust or partnership for the benefit of one or more of such individual and any such spouse, family member or relative, or the estate, executor, administrator, committee or beneficiaries of any thereof; or

(3) any trust, corporation, other body corporate, partnership or other Person for which one or more of the Permitted Holders and other Related Persons of any thereof constitute the beneficiaries, stockholders, partners or owners thereof, or Persons beneficially holding in the aggregate a majority (or more) controlling interest therein; or

(4) any investment fund or vehicle managed, sponsored or advised by such Person or any successor thereto, or by any Affiliate of such Person or any such successor.

"*Related Taxes*" means:

any Taxes, including sales, use, transfer, rental, ad valorem, value added, stamp, property, consumption, franchise, license, capital, registration, business, customs, net worth, gross receipts, excise, occupancy, intangibles or similar Taxes (other than (x) Taxes measured by income and (y) withholding imposed on payments made by any Parent Holdco), required to be paid (*provided* such Taxes are in fact paid) by any Parent Holdco by virtue of its:

(i) being incorporated or otherwise being established or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Parent or any of the Parent's Subsidiaries);

(ii) being a holding company parent, directly or indirectly, of the Parent or any of the Parent's Subsidiaries;

(iii) receiving dividends from or other distributions in respect of the Capital Stock of, directly or indirectly, the Parent or any of the Parent's Subsidiaries; or

(iv) having made any payment with respect to any of the items for which the Parent is permitted to make payments to any Parent Holdco pursuant to Section 4.02.

"*Replacement Assets*" means non-current properties and assets that replace the properties and assets that were the subject of an Asset Disposition or non-current properties and assets that will be used in the Parent's business or in that of the Restricted Subsidiaries or any and all businesses that in the good faith judgment of the Board of Directors or any Officer of the Parent are reasonably related, in each case subject to the provisions of Section 11.05(a)(3).

"*Representative*" means any trustee, agent or representative (if any) for an issue of Indebtedness or the provider of Indebtedness (if provided on a bilateral basis), as the case may be.

"*Responsible Officer*" means, when used with respect to the Trustee, any officer within the applicable corporate trust services department of the Trustee, including any director, assistant director, trust manager, deputy trust manager, assistant trust manager, senior trust officer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"*Restricted Investment*" means any Investment other than a Permitted Investment.

"*Restricted Person*" means any Person that: (a) is listed on the United States Specifically Designated Nationals and Blocked Persons List; the European Union Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions; or the United Kingdom Consolidated List of Financial Sanctions Targets (each a "*Sanctions List*"); (b) is owned or controlled by a Person identified on a Sanctions List, to the extent that such ownership or control results in such Person being subject to the same restrictions as if such person were themselves identified on the corresponding Sanctions List; (c) is located in or incorporated under the laws of a country or territory that is the target of comprehensive sanctions imposed by the United States, which for the purposes of this Indenture, as of the Issue Date are Iran, Syria, Cuba, the Crimea Region, and North Korea; (d) has, within the last five years, been prosecuted by a relevant authority in the United States, the United Kingdom or any member state of the European Union, in relation to a breach of securities laws (in so far as such prosecution relates to insider dealing, unlawful disclosure, market manipulation or prospectus liability) or criminal laws relating to fraud or anti-corruption, except for instances where the prosecution has concluded and did not result in any criminal or civil settlement or penalty being imposed in relation to such breaches; or (e) is a Subsidiary of a person described in (d) above.

"*Restricted Subsidiary*" means any Subsidiary of the Parent.

"*ROFO Condition*" means, in connection with the Incurrence of Indebtedness under Section 4.01(b)(xi), (I) the Issuer, the Parent or any of its other Restricted Subsidiaries, as the case may be, shall have issued a written offer setting forth the material terms of such Indebtedness in good faith to the Holders to provide such Indebtedness on a *pro rata* basis (calculated based on the percentage such Holder's aggregate principal amount of Notes represents to the aggregate principal amount of all Notes then outstanding); (II) the Holders shall have been given five Business Days to accept such written offer in a legally binding acceptance letter and (III) to the extent such Holders fail to deliver one or more legally binding acceptance letters evidencing subscriptions for the full amount of Indebtedness permitted under Section 4.01(b)(xi) in accordance with clause (II) of this definition, such Issuer, Parent or Restricted Subsidiary has offered or will offer such Indebtedness for subscription by any other Person on terms no less favorable than the terms offered to Holders pursuant to clause (I) of this definition.

"*S&P*" means S&P Global Ratings (formerly Standard & Poor's Ratings Services) or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"*SEC*" means the U.S. Securities and Exchange Commission.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"*Securitization Assets*" means any accounts receivable that are or will be subject to a Qualified Securitization Financing.

"*Securitization Fees*" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other commissions, discounts, charges or fees paid to a Person that is not the Parent or a Restricted Subsidiary in connection with, any Qualified Securitization Financing.

"*Securitization Repurchase Obligation*" means any obligation of a seller of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or a portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"*Security Agent*" means GLAS Trust Corporation Limited, as security agent pursuant to the Intercreditor Agreement, or any successor or replacement security agent acting in such capacity.

"*Security Documents*" means each collateral pledge agreement or other document under which Collateral is pledged to secure the Notes.

"*Senior Note Obligations*" has the meaning given to it under the ABL Intercreditor Agreement.

"*Significant Subsidiary*" means any Restricted Subsidiary that meets any of the following conditions:

(1) the Parent's and its Restricted Subsidiaries' investments in and advances to the Restricted Subsidiary exceed 10% of the total assets of the Parent and its Restricted Subsidiaries on a consolidated basis as of the end of the most recently completed fiscal year;

(2) the Parent's and its Restricted Subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the Restricted Subsidiary exceeds 10% of the total assets of the Parent and its Restricted Subsidiaries on a consolidated basis as of the end of the most recently completed fiscal year; or

(3) the Parent's and its Restricted Subsidiaries' proportionate share of the Consolidated EBITDA of the Restricted Subsidiary exceeds 10% of the Consolidated EBITDA of the Parent and its Restricted Subsidiaries on a consolidated basis for the most recently completed fiscal year.

"*Similar Business*" means (a) any businesses, services or activities engaged in by the Parent or any of its Subsidiaries or any Associates on the Issue Date and (b) any businesses, services and activities that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof.

"*Stated Maturity*" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any Contingent Obligations, including those described Section 4.14 and Section 4.05, to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Indebtedness*" means, with respect to any person, except for the Existing Notes, Government Loans and an ABL Facility,

(1) any Indebtedness (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinated in right of payment to the Notes and any Note Guarantee and the Reinstated Notes and the guarantees of the Reinstated Notes pursuant to a written agreement;

(2) for purposes of Section 4.02, any Indebtedness for borrowed money that is secured solely by a Lien that ranks junior to any Liens securing the Notes and the Note Guarantees and the Reinstated Notes and the guarantees of the Reinstated Notes; and

(3) for purposes of Section 4.02, any unsecured Indebtedness for borrowed money.

"*Subordinated Shareholder Funding*" means, any indebtedness that satisfies all of the following conditions: (1) it is provided by a shareholder of the Parent to the Parent (and not to any Restricted Subsidiary), (2) it is subordinated in right of payment to the Notes by being designated as "Subordinated Liabilities" under the Intercreditor Agreement, (3) it is unsecured and does not benefit from any guarantees from the Parent or any of its Restricted Subsidiaries, (4) it does not accrue interest payable in cash and (5) it provides that no repayment of principal may be made in cash until at least six months after the final maturity date of the Notes.

"*Subsidiary*" means, with respect to any Person:

(1) any corporation, other body corporate, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of

shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; or

(2) any partnership, joint venture, limited liability company or similar entity of which:

(i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership interests or otherwise; and

(ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"*Successor Parent*" with respect to any Person means any other Person with more than 50% of the total voting power of the Voting Stock of which is, at the time the first Person becomes a Subsidiary of such other Person, "beneficially owned" (as defined below) by one or more Persons that "beneficially owned" (as defined below) more than 50% of the total voting power of the Voting Stock of the first Person immediately prior to the first Person becoming a Subsidiary of such other Person. For purposes hereof, "beneficially own" has the meaning correlative to the term "beneficial owner", as such term is defined in Rules 13d-3 and 13d-5 under the Exchange Act (as in effect on the Issue Date).

"*Tax Sharing Agreement*" means any tax sharing or profit and loss pooling or similar agreement with customary or arm's-length terms entered into with any Parent Holdco or its Subsidiary, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and of this Indenture.

"*Taxes*" means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any similar charges in the nature of a tax (including interest and penalties with respect thereto) that are imposed by any government or other taxing authority.

"*Temporary Cash Investments*" means any of the following:

(1) any investment in:

(a) direct obligations of, or obligations Guaranteed by, (i) the United States of America or Canada, (ii) a Permissible Jurisdiction, (iii) Switzerland or Norway, (iv) any country in whose currency funds are being held specifically pending application in the making of an investment or capital expenditure by the Parent or a Restricted Subsidiary in that country with such funds or (v) any agency or instrumentality of any such country or member state; or

(b) direct obligations of any country recognized by the United States of America rated at least "A" by S&P or "A-2" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(2) overnight bank deposits, and investments in time deposit accounts, certificates of deposit, bankers' acceptances and money market deposits (or, with respect to foreign banks, similar instruments) maturing not more than one year after the date of acquisition thereof issued by:

(a) any lender under an ABL Facility;

(b) any institution authorized to operate as a bank in any of the countries or member states referred to in sub-clause (1)(a) above; or

(c) any bank or trust company organized under the laws of any such country or member state or any political subdivision thereof,

in each case, having capital and surplus aggregating in excess of $250 million (or the foreign currency equivalent thereof) and whose long-term debt is rated at least "A" by S&P or "A-2" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) or (2) above entered into with a Person meeting the qualifications described in clause (2) above;

(4) Investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than the Parent or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's or "A-2" (or higher) according to S&P (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(5) Investments in securities maturing not more than one year after the date of acquisition issued or fully Guaranteed by any state, commonwealth or territory of the United States of America, Canada, a Permissible Jurisdiction or Switzerland, Norway or by any political subdivision or taxing authority of any such state, commonwealth, territory, country or member state, and rated at least "BBB-" by S&P or "Baa3" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

(6) bills of exchange issued in the United States, Canada, a Permissible Jurisdiction, Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(7) any money market deposit accounts issued or offered by a commercial bank organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, in each case, having capital and surplus in excess of $250 million (or the foreign currency equivalent thereof) or whose long term debt is rated at least "A" by S&P or "A2" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

(8) investment funds investing 95% of their assets in securities of the type described in clauses (1) through (7) above (which funds may also hold reasonable amounts of cash pending investment or distribution); and

(9) investments in money market funds complying with the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the U.S. Investment Company Act of 1940, as amended.

"*Transaction*" has the meaning given to it under the Lock-Up Agreement.

"*Transaction Effective Date*" has the meaning given to it under the Lock-Up Agreement.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended.

"*Tyrus*" means Tyrus Capital Event S.à r.l. and any of its Affiliates and/or Related Funds.

"*Uniform Commercial Code*" means the New York Uniform Commercial Code.

"*United States*" and "*U.S.*" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

"*Voting Stock*" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

Section 1.02. Other Definitions.

Term	**Defined in Section**
"Additional Amounts"	4.13(a)
"Additional Intercreditor Agreement"	4.11(a)
"Additional Notes"	Preamble
"Affiliate Transaction"	4.06(a)
"Agent Members"	Exhibit A
"Asset Disposition Offer"	4.05(c)
"Asset Disposition Offer Amount"	4.05(g)
"Asset Disposition Offer Period"	4.05(g)
"Asset Disposition Purchase Date"	4.05(g)
"Authenticating Agent"	2.03
"Authentication Order"	2.03
"Authorized Agent"	12.08
"Calculation Date"	1.01
"Change of Control Offer"	4.14(b)
"Change of Control Payment"	4.14(b)(i)
"Change of Control Payment Date"	4.14(b)(ii)
"Code"	4.13(a)(ii)
"Common Depositary"	Exhibit A
"Controlling Shareholder"	1.01
"covenant defeasance option"	8.01(b)
"cross acceleration provision"	6.01(d)(ii)
"defeasance trust"	8.02(i)
"Definitive Registered Note"	Exhibit A
"Event of Default"	6.01
"Excess Proceeds"	4.05(c)
"Excluded Amounts"	4.02(b)
"Global Notes"	Exhibit A
"Global Notes Legend"	Exhibit A
"Guarantor Coverage Test"	4.07(a)
"Initial Agreement"	4.04(b)(iii)
"Initial Default"	6.02
"Initial Lien"	4.03
"Initial Notes"	Preamble
"judgment default provision"	6.01(f)
"legal defeasance option"	8.01(b)
"Notes"	Preamble
"payment default"	6.01(d)(i)
"Payor"	4.13(a)
"Permitted Debt"	4.01(b)
"Permitted Payments"	4.02(d)

"protected purchaser"	2.08
"QIB"	Exhibit A
"Registrar"	2.04(i)
"Regulation S"	Exhibit A
"Regulation S Global Notes"	Exhibit A
"Regulation S Notes"	Exhibit A
"Relevant Taxing Jurisdiction"	4.13(a)(ii)
"Restricted Global Notes"	Exhibit A
"Restricted Notes Legend"	Exhibit A
"Restricted Payment"	4.02(a)
"Reversion Date"	4.10
"Rule 144A"	Exhibit A
"Rule 144A Notes"	Exhibit A
"Sanctions List"	1.01
"Securities Act"	Exhibit A
"Successor Company"	5.01(a)(i)
"Suspension Event"	4.10
"Transfer Agent"	Preamble
"Transfer Restricted Notes"	Exhibit A
"Trustee"	Preamble
"US GAAP"	1.01

Section 1.03. Rules of Construction. Unless the context otherwise requires:

(i) a term has the meaning assigned to it;

(ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with IFRS as of the Issue Date;

(iii) "or" is not exclusive;

(iv) "including" means including without limitation;

(v) words in the singular include the plural and words in the plural include the singular; and

(vi) this Indenture is not qualified under, does not incorporate by reference and does not include, and is not subject to, any of the provisions of the Trust Indenture Act.

ARTICLE II

THE NOTES

Section 2.01. Issuable in Series.

(a) The Notes may be issued in one or more series. All Notes of any one series shall be substantially identical except as to denomination.

With respect to any Additional Notes issued after the Issue Date (except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes pursuant to Section 2.08, Section 2.10, Section 2.11 or Section 3.06 or Exhibit A), there shall be (a) established in or pursuant to a resolution of the Board of Directors of the Issuer and (b) (i) set forth or determined in the manner provided in an Officer's Certificate of the Issuer and (ii) established in one or more indentures supplemental hereto, prior to the issuance of such Additional Notes:

(1) whether such Additional Notes shall be issued as part of a new or existing series of Notes and the title of such Additional Notes (which shall distinguish the Additional Notes of the series from Notes of any other series);

(2) the aggregate principal amount of such Additional Notes which may be authenticated and delivered under this Indenture (except for Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Notes of the same series pursuant to Section 2.08, Section 2.10, Section 2.11 or Section 3.06 or Exhibit A and except for Notes which, pursuant to Section 2.06, are deemed never to have been authenticated and delivered hereunder);

(3) the issue price and issuance date of such Additional Notes, including the date from which interest on such Additional Notes shall accrue; and

(4) if applicable, that such Additional Notes shall be issuable in whole or in part in the form of one or more Global Notes and, in such case, the Common Depositary or its nominees for such Global Notes, the form of any legend or legends which shall be borne by such Global Notes in addition to or in lieu of those set forth in Exhibit A hereto and any circumstances in addition to or in lieu of those set forth in Section 2.3 of Exhibit A in which any such Global Note may be exchanged in whole or in part for Additional Notes registered, or any transfer of such Global Note in whole or in part may be registered, in the name or names of Persons other than the Common Depositary or its nominees for such Global Note or a nominee thereof.

(b) If any of the terms of any Additional Notes are established by action taken pursuant to a resolution of the Board of Directors, a copy of an appropriate record of such action shall be certified by an Officer's Certificate and delivered to the Trustee at or prior to the delivery of the Officer's Certificate of the Issuer or this Indenture supplemental hereto setting forth the terms of the Additional Notes.

(c) This Indenture is unlimited in aggregate principal amount. The Issuer may, subject to applicable law and this Indenture, issue an unlimited principal amount of Additional Notes; *provided*, that if the Additional Notes are not fungible with the Notes issued as of the date of this Indenture for U.S. federal income tax purposes or (following the inclusion of clause (b) of Section 7 of the relevant Global Note) pursuant to clause (b) of Section 7 of the relevant Global Note, the Additional Notes will be issued with separate ISIN or Common Code numbers from such series of Notes. The Notes and, if issued, any related Additional Notes will be treated as a single class for all purposes under this Indenture, including, without limitation, with respect to waivers, amendments, redemptions and offers to purchase, except with respect to right of payment and optional redemption, as the relevant amendment, waiver, consent, modification or similar action affects the rights of the Holders of the different series of Notes dissimilarly or as otherwise provided for herein. For the purposes of calculating the aggregate principal amount of Notes that have consented to or voted in favor of any amendment, waiver, consent, modification or other similar action, the Issuer (acting reasonably and in good faith) shall be entitled to select a record date as of which the Dollar Equivalent of the principal amount of any Notes shall be calculated in such consent or voting process.

Section 2.02. Form and Dating. Provisions relating to the Notes are set forth in Exhibit A, which is hereby incorporated in and expressly made a part of this Indenture. The (a) Notes and the Trustee's or the Authenticating Agent's certificate of authentication (as the case may be) and (b) any related Additional Notes (if issued as Transfer Restricted Notes) and the Trustee's or the Authenticating Agent's certificate of authentication (as the case may be) shall each be substantially in the form included in Exhibit A-1, which is hereby incorporated in and expressly made a part of this Indenture. Any Additional Notes issued other than as Transfer Restricted Notes and the Trustee's or the Authenticating Agent's certificate of authentication (as the case may be) shall each be substantially in the form of Exhibit A-1 (without the Restricted Notes Legend), which is hereby incorporated in and expressly made part of this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Issuer is subject, if any, or usage; *provided* that any such notation, legend or endorsement is in a form acceptable to the Issuer, the Paying Agent and the Trustee. Each Note shall be dated the date of its authentication. The Notes shall be issuable only in registered form without interest coupons and only in minimum denominations of $1.00 and whole multiples of $1.00 in excess thereof. Notwithstanding anything to the contrary, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Section 2.03. Execution and Authentication. An Officer of the Issuer shall sign the Notes for the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee or the Authenticating Agent (as the case may be) authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee or the Authenticating Agent (as the case may be) manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture. Notwithstanding the foregoing, if any Note shall have been authenticated and delivered hereunder but never issued and sold by the Issuer, the Issuer shall deliver such Note to the Trustee for cancellation as provided for in Section 2.11.

The Trustee or the Authenticating Agent (as the case may be) shall authenticate and make available for delivery Notes as set forth in Exhibit A following receipt of an authentication order signed by an Officer of the Issuer directing the Trustee or the Authenticating Agent to authenticate such Notes (the "*Authentication Order*").

The Trustee may appoint one or more authenticating agents (each, an "*Authenticating Agent*") to authenticate the Notes. The term "*Authenticating Agent*" includes any successor of any Authenticating Agent appointed hereunder and any additional Authenticating Agent appointed hereunder. Unless limited by the terms of such appointment, the Authenticating Agent may authenticate the Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. The Authenticating Agent has the same rights as any Registrar, Paying Agent or any other Agent to deal with the Issuer or an Affiliate of the Issuer.

The Trustee or Authenticating Agent shall have the right to decline to authenticate and deliver any Notes under this Section 2.03 if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee or Authenticating Agent in good faith shall determine that such action would expose the Trustee or Authenticating Agent to personal liability to existing Holders.

Section 2.04. Registrar and Paying Agent.

(i) The Issuer will maintain one or more Paying Agents for the Notes. The initial Paying Agent will be Global Loan Agency Services Limited (the "*Paying Agent*"). The Issuer will also maintain one or more registrars (each, a "*Registrar*") and a transfer agent (the "*Transfer Agent*"). The initial Registrar and Transfer Agent will be GLAS Americas LLC. Subject to any applicable laws and regulations, the Registrar shall keep a register (the "*Register*") reflecting ownership of the Notes outstanding from time to time and of their transfer and exchange. Global Loan Agency Services Limited, in its capacity as Paying Agent, and GLAS Americas LLC in its capacity as Registrar and Transfer Agent, hereby accept such appointment.

(ii) The Issuer shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. Such agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of any such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee may act, or may arrange for appropriate parties to act, as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Issuer or any other Restricted Subsidiary may act as Paying Agent or Registrar in respect of the Notes.

(iii) The Issuer may change any Registrar, Paying Agent or Transfer Agent upon written notice to such Registrar, Paying Agent or Transfer Agent and to the Trustee, without prior notice to the Holders; *provided*, *however*, that no such removal shall become effective until (i) acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Registrar, Paying Agent, or Transfer Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall, to the extent that the Trustee determines that it is able and agrees to, serve as Registrar or Paying Agent or Transfer Agent until the appointment of a successor in accordance with clause (i) above. The Registrar, any Paying Agent or the Transfer Agent may resign by providing 30 days' written notice to the Issuer and the Trustee. If a successor Paying Agent, Registrar

or Transfer Agent does not take office within 30 days after the retiring Paying Agent, Registrar or Transfer Agent, as the case may be, resigns or is removed the retiring Paying Agent, Registrar or Transfer Agent, as the case may be, may (after consulting with the Issuer) appoint a successor Paying Agent, Registrar or Transfer Agent, as applicable, at any time prior to the date on which a successor Paying Agent, Registrar or Transfer Agent takes office; *provided* that such appointment is reasonably satisfactory to the Issuer. If the successor Agent does not deliver its written acceptance within 30 days after the retiring Agent resigns or is removed, the retiring Agent, the Issuer or the Holders of 10% in principal amount of the outstanding Notes under this Indenture may, at the expense of the Issuer, petition any court of competent jurisdiction for the appointment of a successor Agent. In addition, for so long as Notes are listed on the Global Exchange Market of Euronext Dublin and the rules thereof so require, the Issuer will publish notice of any change of Paying Agent, Registrar or Transfer Agent in a daily newspaper with general circulation in Ireland (which is expected to be *The Irish Times*). Such notice of the change in a Paying Agent, Registrar or Transfer Agent may also be published on the official website of Euronext Dublin (www.euronext.com/en/markets/dublin) in lieu of publication in a daily newspaper, to the extent and in the manner permitted by the rules of the Global Exchange Market of Euronext Dublin.

Section 2.05. Paying Agent. No later than 11:00 a.m. London time on each Business Day prior to the due date of the principal of, interest and premium (if any) on any Note, the Issuer shall deposit with the Paying Agent (or if the Issuer or a Restricted Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum in immediately available funds sufficient to pay such principal, interest and premium (if any) when so becoming due and, subject to receipt of such monies, the Paying Agent shall make payment on the Notes in accordance with this Indenture. The Paying Agent other than the Trustee, or an Affiliate of the Trustee, will hold for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, or interest on the Notes, and will notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. Money held by a Paying Agent need not be segregated, except as required by law, and in no event shall any Paying Agent be liable for any money received by it hereunder. If the Issuer or a Restricted Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee or such entity designated by the Trustee for this purpose and to account for any funds disbursed by the Paying Agent. Upon complying with this Section 2.05, the Paying Agent shall have no further liability for the money delivered to the Trustee. For the avoidance of doubt, the Paying Agent and the Trustee shall be held harmless and have no liability with respect to payments or disbursements to be made by the Paying Agent and Trustee (i) for which payment instructions are not made or that are not otherwise deposited by the respective times set forth in this Section 2.05, (ii) and until they have confirmed receipt of funds sufficient to make the relevant payment.

Section 2.06. Holder Lists. The Registrar shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. Following the exchange of beneficial interests in Global Notes for Definitive Registered Notes, the Issuer shall furnish to the Trustee, the Transfer Agent and the Paying Agent in writing at least five Business Days before each interest payment date, and at such other times as the Trustee may reasonably require, the names and addresses of Holders of such Definitive Registered Notes.

Neither the Trustee, the Agents nor any of their agents will have any responsibility or be liable for any aspect of the records in relation to, or payments made on account of, beneficial ownership interests in the Global Notes or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 2.07. Transfer and Exchange. The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer and in compliance with Exhibit A. When a Note is presented to the Registrar or Transfer Agent, as the case may be, with a request to register a transfer, the Registrar or the Transfer Agent, as the case may be, shall register the transfer as requested if its requirements therefor are met. When Notes are presented to the Registrar or the Transfer Agent, as the case may be, with a request to exchange them for an equal principal amount of Notes of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the Issuer shall execute and

the Trustee or the Authenticating Agent, upon receipt of an authentication order, shall authenticate Notes at the request of the Registrar or the Transfer Agent, as the case may be. The Issuer, Registrar and Transfer Agent may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section 2.07. The Issuer is not required to register the transfer or exchange of any Notes (i) for a period of 15 days prior to any date fixed for the redemption of the Notes, (ii) for a period of 15 days immediately prior to the date fixed for selection of Notes to be redeemed in part (iii) for a period of 15 days prior to the record date with respect to any interest payment date, or (iv) which the Holder has tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer or an Asset Disposition Offer.

Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, each Agent, the Paying Agent, the Transfer Agent and the Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and (subject to Section 2 of the Notes) interest, if any, on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent, the Transfer Agent or the Registrar shall be affected by notice to the contrary.

Any Holder of a Global Note shall, by acceptance of such Global Note, agree that transfers of beneficial interest in such Global Note may be effected only through a book-entry system maintained by (a) the Holder of such Global Note (or its agent) or (b) any Holder of a beneficial interest in such Global Note, and that ownership of a beneficial interest in such Global Note shall be required to be reflected in a book-entry.

All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

Section 2.08. Replacement Notes. If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee or the Authenticating Agent, upon receipt of an authentication order, shall authenticate a replacement Note, such that the Holder (a) notifies the Issuer or the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuer or the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "*protected purchaser*") and (c) satisfies any other reasonable requirements of the Trustee. If required by the Trustee, each Agent or the Issuer, such Holder shall furnish an indemnity bond sufficient in the judgment of the Trustee and the Issuer to protect the Issuer, the Trustee, the Authenticating Agent, Paying Agent and the Registrar from any loss that any of them may suffer if a Note is replaced. The Issuer and the Trustee may charge the Holder for their expenses in replacing a Note including reasonable fees and expenses of counsel.

In the event any such mutilated, lost, destroyed or wrongfully taken Note has become or is about to become due and payable, the Issuer in its discretion may pay such Note instead of issuing a new Note in replacement thereof.

Every replacement Note is an additional obligation of the Issuer.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Notes.

Section 2.09. Outstanding Notes. Notes outstanding at any time are all Notes authenticated by the Trustee or the Authenticating Agent except for those canceled by either of them, those delivered to either of them for cancellation and those described in this Section 2.09 as not outstanding. In addition, the aggregate principal amount of Initial Notes equivalent to the Initial Notes Reduction Amount shall not be deemed to be outstanding upon issuance of Additional Notes in excess of $20.0 million, unless such amount of Initial Notes is not redeemed on the Business Day following the Transaction Effective Date in accordance with clause (b) of Section 7 of the relevant Global Note, in which case such amount of Initial Notes will be deemed to be outstanding on and from the day immediately succeeding such Business Day. Subject to Section 12.04, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

If a Note is replaced pursuant to Section 2.08, it ceases to be outstanding unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Note is held by a protected purchaser.

If the Paying Agent receives (or the Issuer or another Restricted Subsidiary is acting as Paying Agent and such Paying Agent segregates and holds in trust) in accordance with this Indenture, by 11:00 a.m. London time on each redemption date or maturity date money sufficient to pay all principal and interest and premium, if any, payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, and the Paying Agent is not prohibited from paying such amount to the Holders on that date pursuant to the terms of this Indenture then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

Section 2.10. Temporary Notes. In the event that Definitive Registered Notes are to be issued under the terms of this Indenture, until such Definitive Registered Notes are ready for delivery, the Issuer may prepare and the Trustee or the Authenticating Agent, upon receipt of an authentication order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Registered Notes but may have variations that the Issuer consider appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee or the Authenticating Agent, upon receipt of an authentication order, shall authenticate Definitive Registered Notes and deliver them in exchange for temporary Notes upon surrender of such temporary Notes at the office or agency of the Issuer, without charge to the Holder.

Section 2.11. Cancellation. The Issuer at any time may deliver Notes to the Registrar for cancellation. The Paying Agent, Transfer Agent and the Trustee shall forward to the Registrar any Notes surrendered to them for registration of transfer, exchange or payment. The Registrar or the Paying Agent (or an agent authorized by the Registrar) and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled Notes in accordance with its customary procedures or deliver canceled Notes to the Issuer pursuant to written direction by an Officer of the Issuer. Certification of the destruction of all canceled Notes shall be delivered to the Issuer. The Issuer may not issue new Notes to replace Notes they redeemed or delivered to the Registrar for cancellation. If the Issuer shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Notes, unless and until the same are surrendered to the Registrar for cancellation pursuant to this Section 2.11. Neither the Trustee nor the Authenticating Agent shall authenticate Notes in place of canceled Notes other than pursuant to the terms of this Indenture.

Section 2.12. Common Code or ISIN Numbers. The Issuer in issuing the Notes may use Common Code or ISIN numbers (if then generally in use) and, if so, the Trustee and Agents shall use Common Code or ISIN numbers in notices of redemption as a convenience to Holders; *provided*, *however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee and the Paying Agent of any change in the Common Code or ISIN numbers.

Section 2.13. Defaulted Interest. If the Issuer defaults in a payment of interest on the Notes, they will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.12 hereof. The Issuer will notify the Trustee as soon as practicable in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Issuer will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) will mail or deliver or cause to be mailed or delivered to the Holders in accordance with Section 12.01 a notice that states the special record date, the related payment date and the amount of such interest to be paid. The Issuer undertakes to promptly inform Euronext Dublin (for so long as the Notes are listed on the Global Exchange Market thereof) of any such special record date.

Section 2.14. Currency. The U.S. dollar is the sole currency of account and payment for all sums payable by the Issuer and the Guarantors under or in connection with this Indenture, the Notes and the Note Guarantees, including damages. Any amount received or recovered in a currency other than the U.S. dollar, whether as a result of, or the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer, any Guarantor or otherwise by any Holder or by the Trustee, in respect of any sum expressed to be due to it from the Issuer or a Guarantor will only constitute a discharge to the Issuer or such Guarantor, as applicable, to the extent of the U.S. dollar amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

If that U.S. dollar amount is less than the U.S. dollar amount expressed to be due to the recipient or the Trustee under any Note, Note Guarantee, or this Indenture, the Issuer and the Guarantors will indemnify them against any loss sustained by such recipient or the Trustee as a result. In any event, the Issuer and the Guarantors will indemnify the recipient or the Trustee on a joint and several basis against the cost of making any such purchase. For the purposes of this Section 2.14, it will be *prima facie* evidence of the matter stated therein for the Holder of a Note or the Trustee to certify in a manner reasonably satisfactory to the Issuer (indicating the sources of information used) the loss it Incurred in making any such purchase. These indemnities constitute a separate and independent obligation from the Issuer's and the Guarantors' other obligations, will give rise to a separate and independent cause of action, will apply irrespective of any waiver granted by any Holder of a Note or the Trustee (other than a waiver of the indemnities set out herein) and will continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under any Note or any Note Guarantee, or to the Trustee.

Except as otherwise specifically set forth herein, for purposes of determining compliance with any U.S. dollar-denominated restriction herein, the Dollar Equivalent amount for purposes hereof that is denominated in a non-U.S. dollar currency shall be calculated based on the relevant currency exchange rate in effect on the date such non-U.S. dollar amount is Incurred or made, as the case may be.

ARTICLE III

REDEMPTION

Section 3.01. Notices to Trustee and Paying Agents. If the Issuer elects to redeem Notes pursuant to Section 5 or Section 6 of the Notes, it shall notify, at least three Business Days before the publication, mailing or delivery of the notice of such redemption, the Trustee, the Registrar and the Paying Agent of the redemption date and the principal amount of Notes to be redeemed and the section of the Note pursuant to which the redemption will occur.

The Issuer shall give each notice to the Trustee, Registrar and the Paying Agent provided for in this Article III at least 10 days, but not more than 60 days, before the redemption date. In the case of a redemption pursuant to Section 5 of the Notes, such notice shall be accompanied by an Officer's Certificate from the Issuer setting forth: (i) the redemption date; (ii) the ISIN, common code, CUSIP or other securities identification number of the Notes to be redeemed; (iii) the principal amount of Notes to be redeemed; (iv) the redemption price; (v) the paragraph of the Notes pursuant to which the redemption will occur and (vi) that such redemption will comply with the conditions herein.

In the case of a redemption pursuant to Section 6 of the Notes, at least three Business Days prior to the publication, mailing or delivery of any notice of redemption of Notes pursuant to the foregoing, the Issuer will deliver to the Trustee (a) an Officer's Certificate stating that they are entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to their right so to redeem have been satisfied and (b) an opinion of an independent tax counsel of recognized standing to the effect that the Issuer has been or will become obligated to pay Additional Amounts as a result of a Change in Tax Law. The Trustee will accept and shall be entitled to rely on such Officer's Certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, without further inquiry, in which event it will be conclusive and binding on the Holders. Any such notice may be canceled at any time prior to notice of such redemption being published, mailed or delivered to any Holder and shall thereby be void and of no effect.

Section 3.02. Selection of Notes To Be Redeemed or Repurchased. If less than all of the Notes are to be redeemed at any time, the Paying Agent or the Registrar will select Notes for redemption in compliance with the requirements of the principal securities exchange, if any, on which the Notes are listed, and in compliance with the applicable procedures of Euroclear or Clearstream, or if the Notes are not so listed or such exchange prescribes no method of selection and the Notes are not held through Euroclear or Clearstream, or Euroclear or Clearstream prescribe no method of selection, on a *pro rata* basis; *provided, however*, that no Definitive Registered Note of $1.00 in aggregate principal amount or less shall be redeemed in part and only Notes in integral multiples of $1.00

will be redeemed. None of the Trustee, the Paying Agent nor the Registrar will be liable for any selections made in accordance with this Section 3.02.

Section 3.03. Notice of Redemption. Subject to Section 3.03(ii) below, not less than 10 days but not more than 60 days before a date for redemption of Notes, the Issuer shall transmit to each Holder (with a copy to the Trustee and Registrar) a notice of redemption in accordance with Section 12.01; *provided*, *however*, that any notice of redemption provided for by Section 6 of the Notes shall not be given (a) earlier than 60 days prior to the earliest date on which the Payor would be obligated to make a payment of Additional Amounts and (b) unless at the time such notice is given, the obligation to pay such Additional Amounts remains in effect. In addition, for so long as the Notes are listed on the Global Exchange Market of Euronext Dublin and the rules thereof so require, the Issuer shall publish notice of redemption in a daily newspaper with general circulation in Ireland (which is expected to be the *Irish Times*) and in addition to such publication, not less than 10 nor more than 60 days prior to the redemption date, mail such notice to Holders by first-class mail, postage prepaid, at their respective addresses as they appear on the registration books of the Registrar. While in global form, notices to Holders may be delivered via Euroclear or Clearstream in lieu of notice via registered mail. Such notice of redemption may also be published on the website of Euronext Dublin (www.euronext.com/en/markets/dublin) in lieu of publication in *The Irish Times* so long as the rules of the Global Exchange Market of Euronext Dublin are complied with.

(i) The notice shall identify the Notes to be redeemed and shall state:

A. the redemption date and the record date;

B. the redemption price, and, if applicable, the appropriate calculation of such redemption price and the amount of accrued interest to the redemption date;

C. the name and address of the Paying Agent;

D. that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

E. if fewer than all the outstanding Notes are to be redeemed, the certificate numbers and principal amounts of the particular Notes to be redeemed;

F. that, unless the Issuer defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Notes (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

G. the Common Code or ISIN numbers, as applicable, if any, printed on the Notes being redeemed;

H. the paragraph of the Notes or section of this Indenture pursuant to which the Notes are being redeemed; and

I. that no representation is made as to the correctness or accuracy of the Common Code or ISIN numbers, as applicable, if any, listed in such notice or printed on the Notes.

(ii) At the Issuer's written request, the Trustee or the Paying Agent shall give the notice of redemption in the Issuer's name and at the Issuer's expense. In such event, the Issuer shall deliver to the Trustee and the Paying Agent, with a copy to the Trustee, at least 5 Business Days prior to the date on which notice of redemption is to be delivered to the Holders (unless a shorter period is satisfactory to the Trustee), an Officer's Certificate requesting that the Trustee give such notice and the information required and within the time periods specified by this Section.

Section 3.04. Effect of Notice of Redemption. Once notice of redemption is delivered, Notes called for redemption cease to accrue interest, and become due and payable, on the redemption date and at the redemption price stated in the notice; *provided*,

however, that any redemption notice given in respect of the redemption referred to in Section 5 of the Notes may, at the Issuer's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice shall state that, in the Issuer's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date so delayed; *provided* that in no case shall the notice have been delivered less than 10 days or more than 60 days prior to the date on which such redemption (if any) occurs. In addition, the Issuer may provide in such notice that payment of the redemption price and performance of the Issuer's obligations with respect to such redemption may be performed by another Person. Upon surrender to the Paying Agent, the Notes shall be paid at the redemption price stated in the notice, plus accrued interest, if any, to, but not including, the redemption date; *provided*, *however*, that if the redemption date is after a regular record date and on or prior to the interest payment date, the accrued interest shall be payable to the Holder of the redeemed Notes registered on the relevant record date. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

Section 3.05. Deposit of Redemption Price. No later than 11:00 a.m. London time on the Business Day prior to each redemption date, the Issuer shall deposit with the Paying Agent (or, if the Issuer or another Restricted Subsidiary is the Paying Agent, shall segregate and hold in trust) money in immediately available funds (denominated in U.S. dollars) sufficient to pay the redemption or purchase price of and accrued interest on all Notes or portions thereof to be redeemed on that date other than Notes or portions of Notes called for redemption that have been delivered by the Issuer to the Registrar for cancellation. On and after the redemption date, interest shall cease to accrue on Notes or portions thereof called for redemption so long as the Issuer has deposited with the Paying Agent funds sufficient to pay the redemption or purchase price of, plus accrued and unpaid interest and Additional Amounts, if any, on, the Notes to be redeemed pursuant to this Indenture, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture. For the avoidance of doubt, the Paying Agent and the Trustee shall be held harmless and have no liability with respect to payments or disbursements to be made by the Paying Agent and Trustee (i) for which payment instructions are not made or that are not otherwise deposited by the respective times set forth in this Section 3.05, and (ii) until they have confirmed receipt of funds sufficient to make the relevant payment. If the Issuer elects to redeem the Notes or portions thereof and request the Trustee to distribute to the Holders of the Notes any amounts deposited in trust (which, for the avoidance of doubt, will include accrued and unpaid interest to but excluding the date fixed for redemption) prior to the date fixed for redemption in accordance with Section 8.01, the applicable redemption notice will state that Holders of the Notes will receive such amounts deposited in trust prior to the date fixed for redemption and the relevant payment date.

Section 3.06. Notes Redeemed in Part. Subject to the terms hereof, upon surrender of a Note that is redeemed in part, the Issuer shall execute and the Trustee or an Authenticating Agent shall, upon receipt of an Authentication Order from the Issuer, authenticate for the Holder (at the Issuer's expense) a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

ARTICLE IV

COVENANTS

Section 4.01. Limitation on Indebtedness.

(a) The Parent will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); *provided, however*, that the Issuer and any Guarantor may Incur Indebtedness (including Acquired Indebtedness) if on the date of such Incurrence and after giving *pro forma* effect thereto (including *pro forma* application of the proceeds thereof), the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries would have been at least 2.0 to 1.0 and the Consolidated Net Leverage Ratio for the Parent and its Restricted Subsidiaries would have been at least 3.0 to 1.0.

(b) Section 4.01(a) will not prohibit the Incurrence of the following Indebtedness ("*Permitted Debt*"):

(i) Indebtedness Incurred pursuant to any Credit Facility (including in respect of letters of credit or bankers' acceptances issued or created thereunder), and any Refinancing Indebtedness in respect thereof and Guarantees in respect of such Indebtedness in a maximum aggregate principal amount at any time outstanding not to exceed $100.0 million; *plus* in the case of any refinancing of any Indebtedness permitted under this Section 4.01(b)(i) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing; *provided* that the aggregate principal amount of Indebtedness Incurred by Restricted Subsidiaries that are not Guarantors or the Issuer pursuant to this Section 4.01(b)(i) shall not exceed $10.0 million at any time;

(ii) A. Guarantees by the Parent or any Restricted Subsidiary of Indebtedness of the Issuer or any Guarantor or guarantees by any Restricted Subsidiary that is not a Guarantor of Indebtedness of any other Restricted Subsidiary that is not a Guarantor, so long as the Incurrence of such Indebtedness is permitted under the terms of this Indenture, *provided*, that if such Indebtedness is subordinated to the Notes or any Note Guarantee, then such guarantees shall also be subordinated to the Note or such Note Guarantee on the same basis; or

B. without limiting the provisions of Section 4.03, Indebtedness arising by reason of any Lien granted by or applicable to any Person securing Indebtedness of the Parent or any Restricted Subsidiary so long as the Incurrence of such Indebtedness is permitted under the terms of this Indenture;

(iii) Indebtedness of the Parent owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Parent or any Restricted Subsidiary; *provided*, *however*, that:

A. in the case of Indebtedness of the Parent, the Issuer or a Guarantor owing to and held by any Restricted Subsidiary that is not a Guarantor (or the Issuer) (except in respect of intercompany current liabilities Incurred in the ordinary course of business in connection with cash management positions of the Parent and its Restricted Subsidiaries), such Indebtedness shall be unsecured and expressly subordinated in right of payment to the prior payment in full in cash of all obligations with respect to the Notes, in the case of the Issuer, and the respective Note Guarantee, in the case of a Guarantor; and

B. (i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Parent or a Restricted Subsidiary; and (ii) any sale or other transfer of any such Indebtedness to a Person other than the Parent or a Restricted Subsidiary, shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this Section 4.01(b)(iii) by the Parent or such Restricted Subsidiary, as the case may be;

(iv) (A) Indebtedness represented by the Initial Notes outstanding on the Issue Date and the related Note Guarantees and any Additional Notes outstanding on the Transaction Effective Date offered in accordance with the Additional Notes Offer Condition and the related Note Guarantees; *provided* that the aggregate principal amount of Indebtedness represented by the Notes incurred pursuant to this Section 4.01(b)(iv)(A) at no time exceeds $60.0 million outstanding for the purposes of Section 2.09 of this Indenture, (B) Indebtedness represented by the Reinstated Notes and the guarantees of the Reinstated Notes issued on the Transaction Effective Date, (C) any Indebtedness (other than Indebtedness described in Section 4.01(b)(iii)) outstanding on the Issue Date after giving effect to the Transaction, consisting of the Indebtedness listed on Schedule 1 to the Indenture, including the Existing Notes, (D) Refinancing Indebtedness Incurred in respect of any Indebtedness described in this Section 4.01(b)(iv) (other than clause (iv)(E)) or Incurred pursuant to Section 4.01(a), (E) Management Advances and (F) any loan or other instrument contributing the proceeds of the Notes, the Existing Notes and/or the Reinstated Notes;

(v) [Reserved];

(vi) Indebtedness under Currency Agreements, Interest Rate Agreements and Commodity Hedging Agreements not for speculative purposes (as determined in good faith by the Board of Directors or an Officer of the Parent);

(vii) Indebtedness consisting of (A) Capitalized Lease Obligations, mortgage financings, Purchase Money Obligations or other financings, Incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvement of property, plant or equipment used in a Similar Business or (B) Indebtedness otherwise Incurred to finance the purchase, lease, rental or cost of design, construction, installation or improvement of property (real or personal) or equipment that is used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, and any Indebtedness which refinances, replaces or refunds such Indebtedness, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this Section 4.01(b)(vii) and then outstanding, will not exceed at any time outstanding $15.0 million;

(viii) Indebtedness in respect of (A) workers' compensation claims, self-insurance obligations, performance, indemnity, surety, judgment, appeal, advance payment, customs, VAT or other tax or other guarantees or other similar bonds, instruments or obligations and completion guarantees and warranties provided by the Parent or a Restricted Subsidiary or relating to liabilities, obligations or guarantees Incurred in the ordinary course of business or in respect of any governmental requirement, (B) letters of credit, bankers' acceptances, guarantees or other similar instruments or obligations issued or relating to liabilities or obligations Incurred in the ordinary course of business or in respect of any governmental requirement; *provided*, *however*, that upon the drawing of such letters of credit or other similar instruments, the obligations are reimbursed within 30 days following such drawing, (C) the financing of insurance premiums in the ordinary course of business and (D) any customary treasury or cash management services, including treasury, depository, overdraft, credit card processing, credit or debit card, purchase card, electronic funds transfer, the collection of checks and direct debits, cash pooling and other cash management arrangements, in each case, in the ordinary course of business;

(ix) Indebtedness arising from agreements providing for customary guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); *provided* that, in the case of a disposition, the maximum liability of the Parent and its Restricted Subsidiaries in respect of all such Indebtedness shall at no time exceed the gross proceeds, including the fair market value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Parent and its Restricted Subsidiaries in connection with such disposition;

(x) (A) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided*, however, that such Indebtedness is extinguished within 30 Business Days of Incurrence;

(B) customer deposits and advance payments received in the ordinary course of business from customers for goods or services purchased in the ordinary course of business;

(C) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions Incurred in the ordinary course of business of the Parent and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Parent and its Restricted Subsidiaries; and

(D) Indebtedness Incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management of bad debt purposes, in each case Incurred or undertaken in the ordinary course of business;

(xi) Indebtedness of the Issuer or any Guarantor in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other

Indebtedness Incurred pursuant to this Section 4.01(b)(xi) and then outstanding, will not exceed $25.0 million, *provided* that the ROFO Condition has been satisfied;

(xii) Indebtedness under daylight borrowing facilities Incurred in connection with any refinancing of Indebtedness (including by way of set-off or exchange) so long as any such Indebtedness is repaid within three days of the date on which such Indebtedness is Incurred;

(xiii) Indebtedness Incurred under (i) the Existing A/R Facility, (ii) any Qualified Securitization Financing that refinances or replaces the Existing A/R Facility and (iii) any other Qualified Securitization Financing, for this clause (iii), in an aggregate principal amount not to exceed $25.0 million at any one time; and

(xiv) Indebtedness in respect of any letters of credit, indemnities, guarantees or other undertakings in connection with environmental assurances, reclamation or rehabilitation operations.

(c) Notwithstanding the foregoing, prior to the Transaction Effective Date, no Indebtedness may be Incurred under Section 4.01(a), Section 4.01(b)(i) or Section 4.01(b)(xi).

(d) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Section 4.01:

(i) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in Section 4.01(a) and Section 4.01(b), the Parent, in its sole discretion, will classify, and may from time to time reclassify, such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of the clauses under Section 4.01(a) and Section 4.01(b);

(ii) Notwithstanding Section 4.01(d)(i), Indebtedness Incurred under Section 4.01(b)(i) may not be reclassified;

(iii) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments or any similar "parallel debt" obligations relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(iv) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are Incurred pursuant to any Credit Facility and are being treated as Incurred pursuant to clause (i), (vii) or (xi) of Section 4.01(b) or Section 4.01(a) and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;

(v) the principal amount of any Disqualified Stock of the Parent or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(vi) Indebtedness permitted by this Section 4.01 need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this Section 4.01 permitting such Indebtedness; and

(vii) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined on the basis of IFRS.

(e) Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in IFRS will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 4.01. Except as otherwise specified, the amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (b) the principal amount, or liquidation preference thereof, in the case of any other Indebtedness.

(f) [Reserved].

(g) For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the Dollar Equivalent of the principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or, at the option of the Parent, first committed, in the case of Indebtedness Incurred under a revolving credit facility; *provided* that (a) if such Indebtedness is Incurred to refinance other Indebtedness denominated in a currency other than the U.S. dollar, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the amount set forth in clause (2) of the definition of Refinancing Indebtedness; (b) the Dollar Equivalent of the principal amount of any such Indebtedness outstanding on the Issue Date shall be calculated based on the relevant currency exchange rate in effect on the Issue Date; and (c) if any such Indebtedness that is denominated in a different currency is subject to a Currency Agreement (with respect to the U.S. dollar) covering principal amounts payable on such Indebtedness, the amount of such Indebtedness expressed in U.S. dollars will be adjusted to take into account the effect of such agreement.

(h) Notwithstanding any other provision of this Section 4.01, the maximum amount of Indebtedness that the Parent or a Restricted Subsidiary may Incur pursuant to this Section 4.01 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(i) Neither the Issuer nor any Guarantor will Incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Issuer or any Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Note Guarantee on substantially identical terms; *provided, however,* that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Issuer or any Guarantor solely by virtue of being unguaranteed or unsecured or by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Indebtedness.

Section 4.02. Limitation on Restricted Payments.

(a) The Parent will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to:

(i) declare or pay any dividend or make any other payment or distribution on or in respect of the Parent's or any Restricted Subsidiary's Capital Stock (including any payment in connection with any merger or consolidation involving the Parent or any of its Restricted Subsidiaries) except:

A. dividends or distributions payable in Capital Stock of the Parent (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Parent; and

B. dividends or distributions payable to the Parent or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Parent or another Restricted Subsidiary on no more than a *pro rata* basis, measured by value);

(ii) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Parent or any direct or indirect Parent Holdco held by Persons other than the Parent or a Restricted Subsidiary (other than in exchange for Capital Stock of the Parent (other than Disqualified Stock));

(iii) make any principal payment on, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than (a) any such payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement or in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of the date of payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement and (b) any Indebtedness Incurred pursuant to Section 4.01(b)(iii));

(iv) make any payment in cash on, or with respect to, or purchase, redeem, defease or otherwise acquire or retire for cash, any Subordinated Shareholder Funding; or

(v) make any Restricted Investment in any Person,

(any such dividend, distribution, payment, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (i) through (v) of this Section 4.02(a) are referred to herein as a "*Restricted Payment*").

(b) The fair market value of property or assets other than cash covered by Section 4.02(a) shall be the fair market value thereof as determined in good faith by an Officer of the Parent, or, if such fair market value exceeds the greater of (i) $10.0 million and (ii) 1.0% of Consolidated Net Tangible Assets, by the Board of Directors.

(c) The foregoing provisions will not prohibit any of the following (collectively, "*Permitted Payments*"):

(i) any Restricted Payment made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Parent) of, Capital Stock of the Parent (other than Disqualified Stock) or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock) of the Parent;

(ii) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be Incurred pursuant to Section 4.01;

(iii) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Preferred Stock of the Parent or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock of the Parent or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to Section 4.01, and that in each case, constitutes Refinancing Indebtedness;

(iv) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness:

A. (i) from Net Available Cash to the extent permitted pursuant to Section 4.05, but only if the Parent shall have first complied with Section 4.05 and purchased all Notes tendered pursuant to any offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness and (ii) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest; or

B. following the occurrence of a Change of Control (or other similar event described therein as a "change of control"), but only (i) if the Parent shall have first complied with Section 4.14 and purchased all Notes tendered pursuant to the offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness and (ii) at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest.

(v) any dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this Section 4.02;

(vi) [Reserved];

(vii) the declaration and payment of dividends to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with the terms of Section 4.01;

(viii) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof;

(ix) dividends, loans, advances or distributions to any Parent Holdco or other payments by the Parent or any Restricted Subsidiary in amounts equal to (without duplication):

A. the amounts required for any Parent Holdco to pay any Related Taxes; or

B. the amounts constituting or to be used for purposes of making payments to the extent specified in Section 4.06(b)(ii), Section 4.06(b)(iii), Section 4.06(b)(v) and Section 4.06(b)(vii);

(x) [Reserved];

(xi) payments by the Parent, or loans, advances, dividends or distributions to any Parent Holdco to make payments, to holders of Capital Stock of the Parent or any Parent Holdco in lieu of the issuance of fractional shares of such Capital Stock; *provided*, *however*, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this Section 4.02 or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Board of Directors of the Parent);

(xii) Restricted Payments in an aggregate amount outstanding at any time not to exceed the aggregate cash amount of Investments in exchange for or using as consideration Investments previously made under this Section 4.02(c)(xii);

(xiii) [Reserved];

(xiv) [Reserved];

(xv) the payment of any Securitization Fees and purchases of Securitization Assets and related assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing; and

(xvi) payments made in connection with the use of proceeds from the offering of the Notes.

(d) The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Parent or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and

the fair market value of any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Parent acting in good faith.

Section 4.03. Limitation on Liens.

(a) The Parent will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, Incur or suffer to exist any Lien upon any of its property or assets (including Capital Stock of a Restricted Subsidiary), whether owned on the Issue Date or acquired after that date, or any interest therein or any income or profits therefrom, which Lien is securing any Indebtedness (such Lien, the "*Initial Lien*"), except (i) in the case of property or asset that does not constitute Collateral (1) Permitted Liens or (2) Liens on property or assets that are not Permitted Liens if the Notes and this Indenture (or a Note Guarantee in the case of Liens of a Guarantor) are directly secured equally and ratably with, or prior to, the Indebtedness secured by such Initial Lien for so long as such Indebtedness is so secured and (ii) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.

(b) Any such Lien created in favor of the Notes, the Guarantees, and the Indenture pursuant to Section 4.03(a)(i)(2) will be automatically and unconditionally released and discharged upon (i) the release and discharge of the Initial Lien to which it relates, and (ii) otherwise as set forth under this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement, or under the relevant Security Document.

Section 4.04. Limitation on Restrictions on Distributions from Restricted Subsidiaries.

(a) The Issuer will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(i) pay dividends or make any other distributions in cash or otherwise on its Capital Stock or pay any Indebtedness or other obligations owed to the Issuer or any other Restricted Subsidiary, or with respect to any other interest or participation in, or measured by, its profits;

(ii) make any loans or advances to the Issuer or any other Restricted Subsidiary; or

(iii) sell, lease or transfer any of its property or assets to the Issuer or any other Restricted Subsidiary,

provided that (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Parent or any Restricted Subsidiary to other Indebtedness Incurred by the Parent or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

(b) The provisions of Section 4.04(a) will not prohibit:

(i) any encumbrance or restriction pursuant to (a) any Credit Facility, (b) the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement, (c) any other agreement or instrument, in each case, in effect at or entered into on the Issue Date, (d) the indenture governing the Reinstated Notes or (e) the indenture governing the Existing Notes;

(ii) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Parent or any Restricted Subsidiary, or on which such agreement or instrument is assumed by the Parent or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by the Parent or was merged, consolidated or otherwise combined with or into the Parent or any Restricted Subsidiary entered into or in connection with such transaction) and outstanding on such date; *provided* that, for the purposes of this Section 4.04(b)(ii), if another Person is the Successor Company (as defined in Section 5.01(a)(i)), any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall

be deemed acquired or assumed by the Parent or any Restricted Subsidiary when such Person becomes the Successor Company;

(iii) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness Incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in Section 4.04(b)(i), Section 4.04(b)(ii) or this Section 4.04(b)(iii) (an "*Initial Agreement*") or contained in any amendment, supplement or other modification to an agreement referred to in Section 4.04(b)(i), Section 4.04(b)(ii) or this Section 4.04(b)(iii); *provided*, *however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or instrument are no less favorable in any material respect to the Holders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Board of Directors or an Officer of the Parent);

(iv) any encumbrance or restriction:

A. that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any lease, license or other contract;

B. contained in mortgages, charges, pledges or other security agreements permitted under this Indenture or securing Indebtedness of the Parent or a Restricted Subsidiary permitted under this Indenture to the extent such encumbrances or restrictions restrict the transfer of the property or assets subject to such mortgages, charges, pledges or other security agreements; or

C. pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Parent or any Restricted Subsidiary;

(v) any encumbrance or restriction pursuant to Purchase Money Obligations and Capitalized Lease Obligations permitted under this Indenture, in each case, that impose encumbrances or restrictions on the property so acquired, or any encumbrance or restriction pursuant to a joint venture agreement that imposes restrictions on the distribution or transfer of the assets or Capital Stock of the joint venture;

(vi) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(vii) customary provisions in leases, licenses, joint venture agreements and other similar agreements and instruments entered into in the ordinary course of business;

(viii) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, or required by any regulatory authority;

(ix) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(x) any encumbrance or restriction pursuant to Currency Agreements, Interest Rate Agreements, Commodity Hedging Agreements or in connection with any Qualified Securitization Financing;

(xi) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be Incurred subsequent to the Issue Date pursuant to Section 4.01 if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Holders of the Notes than (i) the encumbrances and restrictions contained in this Indenture and the Intercreditor Agreement, together with the Security Documents associated therewith, in each case, as in effect on the Issue Date, or the ABL Intercreditor Agreement or (ii) as is customary in comparable financings (as determined in good faith by the Board of Directors or an Officer of the Parent) or where the Parent determines that such encumbrance or restriction will not adversely affect, in any material respect, the Issuer's ability to make principal or interest payments on the Notes; or

(xii) any encumbrance or restriction existing by reason of any lien permitted under Section 4.03.

Section 4.05. Limitation on Sales of Assets and Subsidiary Stock

(a) The Parent will not, and will not permit any Restricted Subsidiary to, consummate any Asset Disposition unless:

(i) the consideration the Parent or such Restricted Subsidiary receives for such Asset Disposition is not less than the fair market value of the assets sold (as determined by the Parent's Board of Directors); and

(ii) at least 75% of the consideration the Parent or such Restricted Subsidiary receives in respect of such Asset Disposition consists of:

A. cash (including any Net Cash Proceeds received from the conversion within 180 days of such Asset Disposition of securities, notes or other obligations received in consideration of such Asset Disposition);

B. Cash Equivalents;

C. the assumption by the purchaser of (x) any liabilities recorded on the Parent's or such Restricted Subsidiary's balance sheet or the notes thereto (or, if Incurred since the date of the latest balance sheet, that would be recorded on the next balance sheet) (other than Subordinated Indebtedness), as a result of which neither the Parent nor any of the Restricted Subsidiaries remains obligated in respect of such liabilities or (y) Indebtedness of a Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, if the Parent and each other Restricted Subsidiary is released from any guarantee of such Indebtedness as a result of such Asset Disposition;

D. Replacement Assets;

E. any Capital Stock of another Similar Business, if, after giving effect to any such acquisition of Capital Stock, the Similar Business is or becomes a Restricted Subsidiary;

F. assets (other than Capital Stock and cash or Cash Equivalents) that are used or useful in a Similar Business; or

G. consideration consisting of Indebtedness of the Issuer or any Guarantor received from Persons who are not the Parent or any Restricted Subsidiary, but only to the extent that such Indebtedness (i) has been extinguished by the Issuer or the applicable Guarantor and (ii) is not Subordinated Indebtedness of the Issuer or such Guarantor.

(b) If the Parent or any Restricted Subsidiary consummates an Asset Disposition, the amount of Net Available Cash from such Asset Disposition shall constitute "*Excess Proceeds*".

(c) If the aggregate amount of Excess Proceeds exceeds $5.0 million, the Issuer shall, within 20 Business Days of receipt of such proceeds, apply the amount equal to the Excess Proceeds to, in the case of the Notes, the Reinstated Notes or the Existing Notes, offer to repurchase at par or, in the case of other Indebtedness, repay such Indebtedness at the required price therein, using the order such Indebtedness would be repaid with enforcement proceeds under the "Application of Proceeds" or similar waterfall provision included in the Intercreditor Agreement (an "*Asset Disposition Offer*"), *provided* that, if an ABL Facility is outstanding, the portion of the Excess Proceeds from the sale of ABL Priority Collateral or any asset held by an ABL Guarantor shall be applied as if they were enforcement proceeds of ABL Priority Collateral under the ABL Intercreditor Agreement.

(d) To the extent that the aggregate amount of Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Parent and its Restricted Subsidiaries may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in this Indenture. If the aggregate principal amount of the Notes surrendered in any Asset Disposition Offer by Holders and other Pari Passu Indebtedness surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Excess Proceeds shall be allocated among the Notes and Pari Passu Indebtedness to be repaid or purchased on a *pro rata* basis on the basis of the aggregate principal amount of tendered Notes and Pari Passu Indebtedness. For the purposes of calculating the principal amount of any such Indebtedness not denominated in U.S. dollars, such Indebtedness shall be calculated by converting any such principal amounts into their Dollar Equivalent determined as of a date selected by the Issuer that is within the Asset Disposition Offer Period (as defined below). Upon completion of any Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

(e) To the extent that any portion of Net Available Cash payable in respect of the Notes is denominated in a currency other than the currency in which the relevant Notes are denominated, the amount thereof payable in respect of such Notes shall not exceed the net amount of funds in the currency in which such Notes are denominated that is actually received by the Issuer upon converting such portion of the Net Available Cash into such currency.

(f) The Asset Disposition Offer, in so far as it relates to the Notes, will remain open for a period of not less than 20 Business Days following its commencement (the "*Asset Disposition Offer Period*"). No later than five Business Days after the termination of the Asset Disposition Offer Period (the "*Asset Disposition Purchase Date*"), the Issuer will purchase the principal amount of Notes and, to the extent they elect, Pari Passu Indebtedness required to be repaid or purchased by it pursuant to this Section 4.05 (the "*Asset Disposition Offer Amount*") or, if less than the Asset Disposition Offer Amount has been so validly tendered, all Notes and Pari Passu Indebtedness validly tendered in response to the Asset Disposition Offer.

(g) On or before the Asset Disposition Purchase Date, the Issuer will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Asset Disposition Offer Amount of Notes and Pari Passu Indebtedness or portions of Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to the Asset Disposition Offer, or if less than the Asset Disposition Offer Amount has been validly tendered and not properly withdrawn, all Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn and in minimum denominations of $1.00 and in integral multiples of $1.00 in excess thereof. The Issuer will deliver to the Trustee an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Issuer in accordance with the terms of this Section 4.05. The Issuer or the Paying Agent, as the case may be, will promptly (but in any case not later than five Business Days after termination of the Asset Disposition Offer Period) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes so validly tendered and not properly withdrawn by such Holder, and accepted by the Issuer for purchase, and the Issuer will promptly issue a new Note (or amend the applicable Global Note), and the Trustee (or an authenticating agent), upon delivery of an Officer's Certificate from the Issuer, will authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered; *provided* that each such new Note will be in a principal amount with a minimum denomination of $1.00. Any Note not so accepted will be promptly mailed or delivered (or transferred by book-entry) by the Issuer to the Holder thereof.

The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Indenture. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.05, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Indenture by virtue of such compliance.

Section 4.06. Limitation on Affiliate Transactions.

(a) The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Parent (any such transaction or series of related transactions being an "*Affiliate Transaction*") involving aggregate value in excess of $2.0 million unless:

(i) the terms of such Affiliate Transaction taken as a whole are not materially less favorable to the Parent or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's-length dealings with a Person who is not such an Affiliate;

(ii) in the event such Affiliate Transaction involves an aggregate value in excess of $10.0 million, the terms of such transaction or series of related transactions have been approved by a resolution of the majority of the disinterested members of the Board of Directors of the Parent resolving that such transaction complies with clause (i) of this Section 4.06(a); *provided*, that if a majority of the members of the Board of Directors are not disinterested with respect to the transaction, the Parent shall deliver a Fairness Opinion to the Trustee; and

(iii) in the event such Affiliate Transaction involves an aggregate value in excess of $20.0 million, the Parent delivers to the Trustee a Fairness Opinion; *provided* that the liability of such accounting, appraisal, or investment banking firm or such other independent expert in giving such opinion may be limited in accordance with its engagement policies.

(b) The provisions of Section 4.06(a) will not apply to:

(i) any Restricted Payment permitted to be made pursuant to Section 4.02, any Permitted Payments (other than pursuant to Section 4.02(c)(ix)(B)) or any Permitted Investment (other than Permitted Investments as defined in paragraphs (1)(b), (2) and (15) of the definition thereof);

(ii) any purchase, issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Parent, any Restricted Subsidiary or any Parent Holdco, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits or consultants' plans (including valuation, health, insurance, deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Parent, in each case in the ordinary course of business;

(iii) any Management Advances and any waiver or transaction with respect thereto;

(iv) any transaction between or among the Parent and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries;

(v) the payment of reasonable fees and reimbursement of expenses to, and customary indemnities (including under customary insurance policies) and employee benefit and pension expenses provided on behalf of, directors, officers, consultants or employees of the Parent, any Restricted Subsidiary or any Parent Holdco (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);

(vi) (a) the entry into and performance of obligations of the Parent or any of its Restricted Subsidiaries under the terms of any transaction pursuant to or contemplated by, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of the Issue Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed, replaced or refinanced from time to time in accordance with the other terms of this Section 4.06 or to the extent not more disadvantageous to the Holders in any material respect, and (b) the entry into and performance of any registration rights or other listing agreement;

(vii) the execution, delivery and performance of, including any payment to be made under, any Tax Sharing Agreement or any arrangement pursuant to which the Parent or any of its Restricted Subsidiaries is required or permitted to file a consolidated tax return, or the formation and maintenance of any consolidated group for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(viii) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business, which are fair to the Parent or the relevant Restricted Subsidiary in the reasonable determination of the Board of Directors or an Officer of the Parent or the relevant Restricted Subsidiary, or are on terms no less favorable than those that could reasonably have been obtained at such time from an unaffiliated party;

(ix) any transaction in the ordinary course of business between or among the Parent or any Restricted Subsidiary and any Affiliate of the Parent or an Associate or similar entity that would constitute an Affiliate Transaction solely because the Parent or a Restricted Subsidiary or any Affiliate of the Parent or a Restricted Subsidiary or any Affiliate of any Permitted Holder owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity;

(x) issuances or sales of Capital Stock (other than Disqualified Stock) of the Parent or options, warrants or other rights to acquire such Capital Stock;

(xi) payment of any Securitization Fees and purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation as part of or in connection with a Qualified Securitization Financing; and

(xii) any participation in a public tender or exchange offers for securities or debt instruments issued by the Parent or any of its Subsidiaries that are conducted on arms' length terms and provide for the same price or exchange ratio, as the case may be, to all holders accepting such tender or exchange offer.

Section 4.07. Guarantor Coverage Test.

(a) If, on the date on which the audited financial statements are required to be furnished to the Trustee under Section 4.09(a)(i) the aggregate (without double counting) total assets, sales, and EBITDA of the Issuer and the Guarantors (excluding intra-group items and on an unconsolidated basis) is less than 90% of the consolidated total assets, consolidated sales and Consolidated EBITDA of the Parent and its Restricted Subsidiaries (the "*Guarantor Coverage Test*"), then the Parent shall, within 90 days of such test date, cause such other Restricted Subsidiaries to accede as Guarantors, subject to the Agreed Security Principles, to ensure that the Guarantor Coverage Test is satisfied (calculated as if such Guarantors had been Guarantors for the purposes of the relevant test date).

(b) For the purposes of calculating the Guarantor Coverage Test:

(i) (for the purpose of calculating EBITDA only) any entity having negative EBITDA;

(ii) any entity which cannot, or pursuant to the Agreed Securities Principles is not required to, become a Guarantor; and

(iii) any entity which is not a wholly-owned Restricted Subsidiary (but only if minority shareholders of such entity require their consents to grant a Note Guarantee),

shall be excluded (x) as a Guarantor from the numerator; and (y) as a Restricted Subsidiary from the denominator.

(c) The Parent shall ensure that, subject to the Agreed Security Principles, when tested on:

(i) the date on which the audited financial statements are required to be furnished to the Trustee under Section 4.09(a)(i); and

(ii) the date on which the unaudited financial statements for the fiscal quarter ended June 30 of each year are required to be furnished to the Trustee under Section 4.09(a)(ii),

each Restricted Subsidiary which is a Material Company and which is not already a Guarantor shall accede as a Guarantor within 90 days of such test date (in the case of Section 4.07(c)(i)) or 60 days of such test date (in the case of Section 4.07(c)(ii)).

(d) Subject to the Agreed Security Principles, any Restricted Subsidiary acceding as a Guarantor pursuant to this Section 4.07 shall grant a Lien on its assets to secure the Notes by the time it must accede as a Guarantor, *provided* that (i) such Restricted Subsidiary that is incorporated in the same jurisdiction as any Guarantor as of the Issue Date shall provide a Lien on the same kind of assets as such Guarantor and (ii) such Restricted Subsidiary that is not incorporated in the same jurisdiction as any Guarantor as of the Issue Date shall provide "all-assets" security where available in the jurisdiction of such Restricted Subsidiary or will otherwise provide security in accordance with the Agreed Security Principles.

Section 4.08. Additional Note Guarantees.

(a) [Reserved].

(b) Notwithstanding anything to the contrary in this Section 4.08, no Restricted Subsidiary shall (x) Guarantee the Indebtedness outstanding under any ABL Facility, any Credit Facility replacing or refinancing any ABL Facility or any other Credit Facility or Public Debt, in each case of the Issuer or a Guarantor, or (y) Incur Indebtedness exceeding $10.0 million pursuant to Section 4.01(b)(i) and 4.01(b)(xi) or any Refinancing Indebtedness in respect thereof exceeding $10.0 million unless such Restricted Subsidiary is or becomes a Guarantor (or is the Issuer) on the date on which the Guarantee or such Indebtedness is Incurred and, if applicable, executes and delivers to the Trustee a supplemental indenture pursuant to which such Restricted Subsidiary will provide a Note Guarantee, which Note Guarantee will be senior to or *pari passu* with such Restricted Subsidiary's Guarantee or Indebtedness described in clauses (x) or (y) of this Section 4.08(b), respectively; *provided*, *however*, that such Restricted Subsidiary shall not be obligated to become a Guarantor to the extent and for so long as the Incurrence of such Note Guarantee could give rise to or result in: (1) any breach or violation of statutory limitations, corporate benefit, financial assistance, fraudulent preference, thin capitalization rules, capital maintenance rules, guidance and coordination rules or the laws rules or regulations (or analogous restriction) of any applicable jurisdiction; (2) any risk or liability for the officers, directors or (except in the case of a Restricted Subsidiary that is a partnership) shareholders of such Restricted Subsidiary (or, in the case of a Restricted Subsidiary that is a partnership, directors or shareholders of the partners of such partnership); or (3) any cost, expense, liability or obligation (including with respect to any Taxes) other than reasonable out of pocket expenses. At the option of the Parent, any Note Guarantee may contain limitations on Guarantor liability to the extent reasonably necessary.

(c) Note Guarantees shall be released as set forth under Section 10.06. In addition, a Note Guarantee of a future Guarantor may also be released at the option of the Parent if at the date of such release either (i) there is no Indebtedness of such Guarantor outstanding which was Incurred after the Issue Date and which could not have been Incurred in compliance with this Indenture if such Guarantor had not been designated as a Guarantor, or (ii) there is no Indebtedness of such Guarantor outstanding which was Incurred after the Issue Date and which could not have been Incurred in compliance with this Indenture as at the date of such release if such Guarantor were not designated as a Guarantor as at that date. The Trustee and the Security Agent shall take all necessary actions, including the granting of releases or waivers under the Intercreditor Agreement or any Additional Intercreditor Agreement, requested by the Parent to effectuate any release of a Note Guarantee in accordance with these provisions, subject to customary protections and indemnifications.

Section 4.09. Reports.

(a) So long as any Notes are outstanding, the Parent will furnish to the Trustee the following reports (provided that, to the extent any reports are filed on the SEC's website, such reports shall be deemed to have been provided to the Trustee):

(i) within 120 days after the end of the Parent's fiscal year beginning with the fiscal year ended December 31, 2020, annual reports containing, to the extent applicable, the following information: (a) audited consolidated balance sheets of the Parent as of the end of the two most recent fiscal years and audited consolidated income statements and statements of cash flow of the Parent for the two most recent fiscal years, including complete footnotes to such financial statements and the report of the independent auditors on the financial statements; (b) unaudited *pro forma* income statement information and balance sheet information of the Parent (which, for the avoidance of doubt, shall not include the provision of a full income statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the most recently completed fiscal year; (c) an operating and financial review of the audited financial statements, including a discussion of the results of operations, financial condition, EBITDA, and liquidity and capital resources of the Parent, and a discussion of material commitments and contingencies and critical accounting policies; (d) a summary description of the business and material affiliate transactions; (e) a description of material operational risk factors; and (f) a summary description of material recent developments;

(ii) within 60 days following the end of each fiscal quarter in each fiscal year of the Parent beginning with the fiscal quarter ending March 31, 2021, quarterly financial statements containing the following information: (a) an unaudited condensed consolidated balance sheet as of the end of such quarter and unaudited condensed statements of income and cash flow for the most recent quarter year-to-date period ending on the unaudited condensed balance sheet date, and the comparable prior year periods, together with condensed footnote disclosure; (b) unaudited *pro forma* income statement information and balance sheet information (which, for the avoidance of doubt, shall not include the provision of a full income statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the relevant quarter; (c) an operating and financial review of the unaudited financial statements, including a discussion of the results of operations, financial condition, EBITDA and material changes in liquidity and capital resources, and a discussion of material changes not in the ordinary course of business in commitments and contingencies since the most recent report; and (d) material recent developments; and

(iii) promptly after the occurrence of any material acquisition, disposition or restructuring or any senior executive officer changes at the Parent or change in auditors of the Parent or any other material event that the Parent or any of its Restricted Subsidiaries announces publicly, a report containing a description of such event.

In addition, the Parent shall furnish to the Holders and to prospective investors, upon the request of such parties, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act for so long as the Notes are not freely transferable under the Exchange Act by persons who are not "affiliates" under the Securities Act.

The Parent shall also make available to Holders and prospective holders of the Notes copies of all reports furnished to the Trustee or the SEC on the Parent's website and if and so long as the Notes are listed on the Global Exchange Market of Euronext Dublin and to the extent that the rules and regulations thereof so require, by posting such reports on the official website of Euronext Dublin (www.euronext.com/en/markets/dublin).

All financial statement information shall be prepared in accordance with IFRS as in effect on the date of such report or financial statement (or otherwise on the basis of IFRS as then in effect) and on a consistent basis for the periods presented, except as may otherwise be described in such information; *provided*, *however*, that the reports set forth in clauses (i), (ii) and (iii) of this

Section 4.09(a) may, in the event of a change in IFRS, present earlier periods on a basis that applied to such periods. No report need include separate financial statements for any Subsidiaries of the Parent or any disclosure with respect to the results of operations or any other financial or statistical disclosure not of a type included in the Parent's previous SEC filings. In addition, the reports set forth above will not be required to contain any reconciliation to U.S. generally accepted accounting principles. For the purposes of this covenant, IFRS shall be deemed to be IFRS as in effect from time to time, without giving effect to the proviso in the definition thereof.

All reports provided pursuant to this Section 4.09 shall be made in the English language. So long as Notes are outstanding, the Parent will, in connection with delivery of the annual and quarterly reports required by clauses (i) and (ii) of this Section 4.09(a), hold a conference call to discuss such reports and the results of operations for the relevant reporting period.

While the Parent is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or elects to comply with such provisions on a voluntary basis, for so long as it continues to file with the SEC, within the time periods specified in clauses (i) and (ii) of this Section 4.09(a), annual reports required by Section 13(a) of the Exchange Act and quarterly reports containing information with a level of detail that is substantially comparable in all material respects to the reports on Form 6-K filed with the SEC on November 24, 2020, August 31, 2020 and June 9, 2020, the reporting requirements set forth in clauses (i) and (ii) of this Section 4.09(a) will be deemed satisfied. Upon complying with the foregoing requirement, the Parent will be deemed to have complied with this Section 4.09.

Delivery of any information, documents and reports to the Trustee pursuant to this Section 4.09 is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein, including the Issuer's compliance with any of its covenants under this Indenture.

Section 4.10. Suspension of Covenants on Achievement of Investment Grade Status.

(a) If on any date following the Issue Date, the Notes have achieved Investment Grade Status and no Default or Event of Default has occurred and is continuing (a "*Suspension Event*"), then, beginning on that day and continuing until such time, if any, at which the Notes cease to have Investment Grade Status (the "*Reversion Date*"), Section 4.01, Section 4.02, Section 4.04, Section 4.05, Section 4.06, Section 4.08 and Section 5.01(a)(iii) of this Indenture and, in each case, any related default provision of this Indenture will cease to be effective and will not be applicable to the Parent and its Restricted Subsidiaries.

(b) Such sections and any related default provisions will again apply according to their terms from the first day on which a Suspension Event ceases to be in effect. Such sections will not, however, be of any effect with regard to actions of the Parent or any of its Restricted Subsidiaries properly taken during the continuance of the Suspension Event, and no action taken in respect of the suspended covenants prior to the Reversion Date will constitute a Default or Event of Default. Section 4.02 will be interpreted as if it has been in effect since the date of this Indenture but not during the continuance of the Suspension Event. On the Reversion Date, all Indebtedness Incurred during the continuance of the Suspension Event will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under Section 4.01(b)(iv)(B). In addition, the Parent or any of the Restricted Subsidiaries will be permitted, without causing a Default or Event of Default, to honor any contractual commitments or take actions in the future after any date on which the Notes cease to have an Investment Grade Status as long as the contractual commitments were entered into during the Suspension Event and not in anticipation of the Notes no longer having an Investment Grade Status. The Parent shall notify the Trustee that the conditions set forth in Section 4.10(a) have been satisfied or of any Reversion Date; *provided* that, no such notification shall be a condition for the suspension or reversion of the covenants described under this Section 4.10 to be effective and the Trustee shall not be obliged to notify the Holders of such event.

The Trustee shall have no duty to monitor the ratings of the Notes, shall not be deemed to have any knowledge of the ratings of the Notes and shall have no duty to notify Holders if the Notes achieve Investment Grade Status or upon the occurrence of the Reversion Date. The Parent shall notify the Trustee in writing that the conditions under this Section 4.10 have been satisfied, although such notification shall not be a condition for suspension of the applicable covenants to be effective.

Section 4.11. Amendments to the Intercreditor Agreement, the ABL Intercreditor Agreement and Additional Intercreditor Agreements .

(a) In connection with the Incurrence of any Indebtedness by the Parent, the Issuer or any other Restricted Subsidiary, the Trustee and the Security Agent shall, at the request of the Issuer, enter into with the Parent, the Issuer, the relevant Restricted Subsidiaries and the holders of such Indebtedness (or their duly authorized Representatives), as applicable, the ABL Intercreditor Agreement or one or more intercreditor agreements or deeds (including a restatement, replacement, amendment or other modification of the Intercreditor Agreement or ABL Intercreditor Agreement) (an "*Additional Intercreditor Agreement*"), on substantially the same terms as the Intercreditor Agreement or the ABL Intercreditor Agreement (or terms that are not materially less favorable to the holders of the Notes as compared to the Intercreditor Agreement or the ABL Intercreditor Agreement) and substantially similar as applies to sharing of the proceeds of security and enforcement of security, priority and release of security; *provided* that such ABL Intercreditor Agreement or Additional Intercreditor Agreement will not impose any personal obligations on the Trustee or Security Agent or adversely affect the personal rights, duties, liabilities, indemnification or immunities of the Trustee or the Security Agent under this Indenture, the Intercreditor Agreement or the ABL Intercreditor Agreement. In connection with the foregoing, the Issuer shall furnish to the Trustee and the Security Agent such documentation in relation thereto as it may reasonably require. As used in this Indenture, a reference to the Intercreditor Agreement and the ABL Intercreditor Agreement will also include any Additional Intercreditor Agreement.

(b) Without limiting the generality of Section 4.11(a), in connection with the Incurrence of any ABL Facility by the Parent, the Issuer or any other Restricted Subsidiary, the Trustee and the Security Agent shall, at the request of the Issuer, enter into with the Parent, the Issuer, the relevant Restricted Subsidiaries and the lenders under any ABL Facility (or their duly authorized Representatives), as applicable, (1) the ABL Intercreditor Agreement in substantially the same form as attached as Exhibit C to this Indenture, (2) an Additional Intercreditor Agreement in respect of the ABL Intercreditor Agreement on terms that are not materially less favorable to the holders of the Notes as compared to the ABL Intercreditor Agreement and (3) amendments or replacements to the Security Documents to secure any ABL Priority Obligations, Senior Note Obligations, Junior Note Obligations, Excess ABL Debt, Excess Senior Note Debt and Excess Junior Note Debt in accordance with the relative priorities set forth in the ABL Intercreditor Agreement (including, for the avoidance of doubt, for the purpose of releasing and regranting Liens on the ABL Priority Collateral to grant a first-priority Lien securing the creditors under any ABL Facility). In connection with the foregoing, the Issuer shall furnish to the Trustee and the Security Agent such documentation in relation thereto as it may reasonably require.

(c) In relation to the Intercreditor Agreement and the ABL Intercreditor Agreement, no consent on behalf of the Holders to the payment, repayment, purchase, repurchase, defeasance, acquisition, retirement or redemption of any obligations subordinated to the Notes thereby shall be required; *provided*, however, that such transaction would comply with Section 4.02.

(d) At the written direction of the Issuer and without the consent of holders of the Notes, the Trustee and the Security Agent shall from time to time enter into one or more amendments to the Intercreditor Agreement or the ABL Intercreditor Agreement to: (1) cure any ambiguity, omission, defect or inconsistency of any such agreement, (2) increase the amount or types of Indebtedness covered by any such Intercreditor Agreement or such ABL Intercreditor Agreement that may be Incurred by the Parent, the Issuer or other Restricted Subsidiaries that is subject to any such Intercreditor Agreement or such ABL Intercreditor Agreement (provided that such Indebtedness is Incurred in compliance with this Indenture), (3) add Guarantors or other Restricted Subsidiaries to the Intercreditor Agreement or the ABL Intercreditor Agreement, (4) further secure the Notes (including Additional Notes), (5) make provision to implement any Permitted Collateral Liens in accordance with the terms of this Indenture, or (6) make any other change to any such agreement that does not adversely affect the holders of Notes in any material respect. The Issuer shall not otherwise direct the Trustee or Security Agent to enter into any amendment to the Intercreditor Agreement or the ABL Intercreditor Agreement (which, for the avoidance of doubt, includes the form of the ABL Intercreditor Agreement attached to this Indenture as Exhibit C) without the consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, except as otherwise permitted under Article IX of this Indenture or as permitted by the terms of the Intercreditor Agreement or the ABL Intercreditor Agreement, and the Issuer may only direct the Trustee or Security Agent to enter into any amendment to the extent such amendment does not impose any personal obligations on the Trustee or Security Agent or, in the opinion of the Trustee or Security Agent, adversely affect their respective rights, duties, liabilities or immunities under this Indenture, the Intercreditor Agreement or the ABL Intercreditor Agreement.

(e) Each Holder, by accepting a Note, shall be deemed to have agreed to and accepted the terms and conditions of the Intercreditor Agreement and the ABL Intercreditor Agreement (whether then entered into or entered into in the future pursuant to

the provisions described herein) and to have irrevocably appointed and authorized the Trustee and the Security Agent to enter into the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement on each Holder's behalf.

(f) A copy of the Intercreditor Agreement, the ABL Intercreditor Agreement or an Additional Intercreditor Agreement shall be made available to the holders of the Notes upon request and will be made available for inspection during normal business hours on any Business Day upon prior written request at the office of the Issuer.

Section 4.12. Payment of Notes. The Issuer shall promptly pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Principal and interest shall be considered paid on the date due if on such date the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal, premium, if any, and interest then due and the Paying Agent is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

Section 4.13. Withholding Taxes.

(a) All payments made by or on behalf of the Issuer or any Guarantor (each, including any successor entities of the Issuer or any Guarantor, as applicable, a "*Payor*") in respect of the Notes or with respect to any Guarantee, as applicable, will be made free and clear of and without withholding or deduction for, or on account of, any Taxes unless the withholding or deduction of such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of:

(i) any jurisdiction from or through which payment on any such Note is made, or any political subdivision or governmental authority thereof or therein having the power to tax; or

(ii) any other jurisdiction in which a Payor is incorporated, organized, engaged in business for tax purposes, or otherwise considered to be a resident for tax purposes, or any political subdivision or governmental authority thereof or therein having the power to tax (each of clause (i) and (ii), a "*Relevant Taxing Jurisdiction*"),

will at any time be required by law to be made from any payments made by or on behalf of the Payor or the Paying Agent with respect to any Note, including payments of principal, redemption price, interest or premium, if any, the Payor will pay (together with such payments) such additional amounts (the "*Additional Amounts*") as may be necessary in order that the net amounts received by each Holder in respect of such payments, after such withholding, or deduction (including any such deduction or withholding from such Additional Amounts), will not be less than the amounts which would have been received in respect of such payments on any such Note in the absence of such withholding or deduction; *provided*, *however*, that no such Additional Amounts will be payable for or on account of:

A. any Taxes that would not have been so imposed but for the existence of any present or former connection between the relevant Holder (or between a fiduciary, settlor, beneficiary, partner, member or shareholder of, or possessor of power over the relevant Holder, if the relevant Holder is an estate, nominee, trust, partnership, limited liability company, corporation or other body corporate) and the Relevant Taxing Jurisdiction (including, without limitation, being resident for tax purposes, or being a citizen or resident or national of, or carrying on a business or maintaining a permanent establishment in, or being physically present in, the Relevant Taxing Jurisdiction) but excluding, in each case, any connection arising solely from the acquisition, ownership or holding of such Note or the receipt of any payment or the exercise or enforcement of rights under such Note, this Indenture or a Guarantee;

B. any Tax that is imposed or withheld by reason of the failure by the Holder or the beneficial owner of the Note to comply with a written request of the Payor addressed to the Holder, after reasonable notice (at least 30 days before any such withholding would be payable), to provide certification, information, documents or other evidence concerning the nationality, residence or identity of the Holder or such beneficial owner or to make any declaration or similar claim or satisfy any other reporting requirement relating to such matters, which is required by a statute, treaty, regulation or administrative practice of the Relevant Taxing Jurisdiction as a precondition to exemption from all or part of such Tax but, only to the extent the Holder or beneficial owner is legally entitled to provide such certification or documentation;

C. any Taxes, to the extent that such Taxes were imposed as a result of the presentation of the Note for payment (where presentation is required) more than 30 days after the relevant payment is first made available for payment to the Holder;

D. any Taxes that are payable otherwise than by withholding from a payment of the principal of, premium, if any, or interest, if any, on the Notes or with respect to any Guarantee;

E. any estate, inheritance, gift, sales, transfer, personal property or similar tax, assessment or other governmental charge;

F. any Taxes that are imposed or withheld pursuant to the Dutch Withholding Tax Act 2021 (*Wet bronbelasting 2021*) substantially in the form as published on December 18, 2019 in the Dutch Official Gazette;

G. any Taxes that are imposed or withheld pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "*Code*"), as of the Issue Date (or any amended or successor version of such sections that are substantively comparable), any regulations promulgated thereunder, any official interpretations thereof, any similar law or regulation adopted pursuant to an intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing or any agreements entered into pursuant to Section 1471(b)(1) of the Code; or

H. any combination of the items (A) through (G) above.

(b) In addition, no Additional Amounts shall be paid with respect to a Holder who is a fiduciary or a partnership or any person other than the beneficial owner of the Notes, to the extent that the beneficiary or settler with respect to such fiduciary, the member of such partnership or the beneficial owner would not have been entitled to Additional Amounts had such beneficiary, settler, member or beneficial owner held such Notes directly.

(c) The Payor will (i) make any required withholding or deduction and (ii) remit the full amount deducted or withheld to the Relevant Taxing Jurisdiction in accordance with applicable law. The Payor will use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Relevant Taxing Jurisdiction imposing such Taxes and will provide such certified copies, or if, notwithstanding the Payor's reasonable efforts to obtain such tax receipts, such tax receipts are not available, certified copies of other reasonable evidence of such payments as soon as reasonably practicable to the Trustee and the Paying Agent. Such copies shall be made available to the Holders upon request and will be made available at the offices of the Paying Agent.

(d) If any Payor is obligated to pay Additional Amounts under or with respect to any payment made on any Note or any Guarantee, at least 30 days prior to the date of such payment, the Payor will deliver to the Trustee and the Paying Agent an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount to be so payable and such other information necessary to enable the Paying Agent to pay Additional Amounts to Holders on the relevant payment date (unless such obligation to pay Additional Amounts arises less than 45 days prior to the relevant payment date, in which case the Payor may deliver such Officer's Certificate as promptly as practicable thereafter). The Trustee and the Paying Agent shall be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary.

(e) Wherever in this Indenture or the Notes there is mentioned, in any context:

(i) the payment of principal;

(ii) purchase prices in connection with a redemption of Notes;

(iii) interest; or

(iv) any other amount payable on or with respect to any of the Notes or any Guarantee, such reference shall be deemed to include payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The Payor will pay (and will indemnify the Holder for) any present or future stamp, issue, registration, court or documentary Taxes or any other excise, property or similar Taxes that arise in a Relevant Taxing Jurisdiction from the execution, delivery or registration of any Notes, any Guarantee, this Indenture, or any other document or instrument in relation thereto (other than in each case, in connection with a transfer of the Notes after the initial issuance of the Notes) or any such Taxes imposed by any jurisdiction as a result of, or in connection with, the enforcement of the Notes or any Guarantee (limited, solely in the case of any such Taxes imposed in a Relevant Taxing Jurisdiction to any such Taxes that are not excluded under (A) through (D) and (F) of Section 4.13(a) or any combination thereof).

The foregoing obligations of this Section 4.13 will survive any termination, defeasance or discharge of this Indenture and will apply *mutatis mutandis* to any jurisdiction in which any successor to a Payor is organized, engaged in business for tax purposes or otherwise resident for tax purposes, or any jurisdiction from or through which any payment under, or with respect to the Notes is made by or on behalf of such Payor, or any political subdivision or taxing authority or agency thereof or therein.

Section 4.14. Change of Control.

(a) If a Change of Control occurs, subject to this Section 4.14, each Holder will have the right to require the Issuer to repurchase all or any part of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of the Notes, plus accrued and unpaid interest to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided*, *however*, that the Issuer shall not be obligated to repurchase the Notes under this Section 4.14 in the event and to the extent that they have unconditionally exercised their right to redeem all of the Notes under Section 5 of the Notes or all conditions to such redemption have been satisfied or waived.

(b) Unless the Issuer has unconditionally exercised their right to redeem all the Notes as described under Section 5 of the Notes or all conditions to such redemption have been satisfied or waived, no later than the date that is 60 days after any Change of Control, the Issuer will mail (or otherwise deliver) a notice (the "*Change of Control Offer*") to each Holder of any such Notes, with a copy to the Trustee:

(i) stating that a Change of Control has occurred or may occur and that such Holder has the right to require the Issuer to purchase all or any part of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest to, but not including, the date of purchase (subject to the right of Holders of record on a record date to receive interest on the relevant interest payment date) (the "*Change of Control Payment*");

(ii) stating the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed) and the record date (the "*Change of Control Payment Date*");

(iii) stating that any Note accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date unless the Change of Control Payment is not paid, and that any Notes or part thereof not tendered will continue to accrue interest;

(iv) describing the circumstances and relevant facts regarding the transaction or transactions that constitute the Change of Control;

(v) describing the procedures determined by the Issuer, consistent with this Indenture, that a Holder must follow in order to have its Notes repurchased; and

(vi) if such notice is mailed prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control.

(c) On the Change of Control Payment Date, if the Change of Control shall have occurred, the Issuer will, to the extent lawful:

(i) accept for payment all Notes or portion thereof properly tendered pursuant to the Change of Control Offer;

(ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes so tendered;

(iii) deliver or cause to be delivered to the Trustee an Officer's Certificate stating the aggregate principal amount of Notes or portions of the Notes being purchased by the Issuer in the Change of Control Offer;

(iv) in the case of Global Notes, deliver, or cause to be delivered, to the Paying Agent the Global Notes in order to reflect thereon the portion of such Notes or portions thereof that have been tendered to and purchased by the Issuer; and

(v) in the case of Definitive Registered Notes, deliver, or cause to be delivered, to the relevant Registrar for cancellation all Definitive Registered Notes accepted for purchase by the Issuer.

(d) If any Definitive Registered Notes have been issued, the Paying Agent will promptly pay each Holder of Definitive Registered Notes so tendered the Change of Control Payment for such Notes, and the Trustee (or an authenticating agent) will, at the cost of the Issuer, promptly authenticate and mail to each Holder of Definitive Registered Notes a new Definitive Registered Note equal in principal amount to the unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a principal amount that is at least $1.00 and integral multiples of $1.00 in excess thereof.

(e) For so long as the Notes are listed on the Global Exchange Market of Euronext Dublin and the rules of such exchange so require, the Issuer will publish notices relating to the Change of Control Offer in a daily newspaper with general circulation in Ireland (which is expected to be *The Irish Times*) or to the extent and in the manner permitted by such rules, post such notices on the official website of Euronext Dublin (*www.euronext.com/en/markets/dublin*).

(f) The Issuer will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. Notwithstanding anything to the contrary contained herein, a Change of Control Offer may be made in advance of a Change of Control, conditioned upon the consummation of such Change of Control, if a definitive agreement is in place providing for the Change of Control at the time the Change of Control Offer is made.

(g) The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section 4.14. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of this Indenture by virtue of the conflict.

Section 4.15. Impairment of Security Interest.

(a) The Parent and the Issuer shall not, and the Parent shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take any action that would have the result of materially impairing the security interest with respect to the Collateral (it being understood that the Incurrence of Permitted Collateral Liens, or the confirmation or affirmation of security interests in respect of the Collateral, shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Trustee and the Holders, and the Parent and the Issuer shall not, and the Issuer shall not permit any

Restricted Subsidiary to, grant to any Person other than the Security Agent, for the benefit of the Trustee and the Holders and the other beneficiaries described in the Security Documents, any Lien over any of the Collateral that is prohibited by Section 4.03, provided, that the Parent, the Issuer and the Restricted Subsidiaries may Incur any Lien over any of the Collateral that is not prohibited by Section 4.03 including Permitted Collateral Liens, and the Collateral may be discharged, transferred or released in any circumstances not prohibited by this Indenture, the Intercreditor Agreement or the applicable Security Documents.

(b) Notwithstanding Section 4.15(a), nothing in this Section 4.15 shall restrict the discharge and release of any Lien in accordance with this Indenture, the Intercreditor Agreement and the ABL Intercreditor Agreement. Subject to the foregoing, the Security Documents may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) to (i) cure any ambiguity, omission, defect or inconsistency therein; (ii) provide for Permitted Collateral Liens; (iii) add to the Collateral or (iv) make any other change thereto that does not adversely affect the Holders in any material respect; *provided, however*, that (except where permitted by this Indenture, the Intercreditor Agreement or the ABL Intercreditor Agreement or to effect or facilitate the creation of Permitted Collateral Liens for the benefit of the Security Agent and holders of other Indebtedness Incurred in accordance with this Indenture), no Security Document may be amended, extended, renewed, restated, or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), unless contemporaneously with such amendment, extension, renewal, restatement, or modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) or with any such action in clauses (ii) and (iii) in this Section 4.15(b), the Issuer delivers to the Security Agent and the Trustee, either (1) a solvency opinion, in form and substance reasonably satisfactory to the Security Agent and the Trustee, from an Independent Financial Advisor which confirms the solvency of the Issuer and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same asset), (2) a certificate from the chief financial officer or the Board of Directors of the relevant Person, in form and substance reasonably satisfactory to the Security Agent and the Trustee, which confirms the solvency of the person granting any such Lien after giving effect to any transactions related to such amendment, extension, renewal, restatement, modification or release, or (3) an Opinion of Counsel (subject to any qualifications customary for this type of Opinion of Counsel), in form and substance reasonably satisfactory to the Trustee, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Lien or Liens created under the Security Document, so amended, extended, renewed, restated, modified or released and replaced are valid and perfected Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or replacement and to which the new Indebtedness secured by the Permitted Collateral Lien is not subject.

(c) In the event that the Parent, the Issuer and the Restricted Subsidiaries comply with the requirements of this Section 4.15, the Trustee and the Security Agent shall (subject to customary protections and indemnifications and each of the Trustee and the Security Agent being indemnified and/or secured to its satisfaction) consent to such actions without the need for instructions from the Holders.

Section 4.16. Compliance Certificate. The Parent will deliver to the Trustee no later than the date on which the Parent is required to deliver annual reports pursuant to Section 4.09, an Officer's Certificate indicating whether the signers thereof know of any Default or Event of Default that occurred during the previous year.

Section 4.17. Listing.

The Issuer and the Guarantors will (i) use their commercially reasonable efforts to cause the Notes, subject to notice of issuance, to be admitted to the official list of Euronext Dublin and admitted to trading on the Global Exchange Market thereof; and (ii) maintain such listing for as long as any of the Notes are outstanding. If the Notes cease to be listed on the Global Exchange Market of Euronext Dublin, the Issuer and the Guarantors will use their commercially reasonable best efforts to promptly list the Notes on another "recognised stock exchange" (as defined in Section 1005 of the Income Tax Act 2007 of the United Kingdom).

Section 4.18. Financial Calculations for Limited Condition Acquisitions.

When calculating the availability under any basket or ratio under this Indenture, in each case in connection with a Limited Condition Acquisition (other than for purposes of making a Restricted Payment, a Permitted Payment or a Permitted Investment), the date of determination of such basket or ratio and of any Default or Event of Default shall, at the option of the Parent, be the date the definitive agreements for such Limited Condition Acquisition are entered into and such baskets or ratios shall be calculated on a *pro forma* basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any Incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the applicable reference period for purposes of determining the ability to consummate any such Limited Condition Acquisition (and not for purposes of any subsequent availability of any basket or ratio). For the avoidance of doubt, (x) if any of such baskets or ratios are exceeded as a result of fluctuations in such basket or ratio (including due to fluctuations in Consolidated EBITDA of the Parent or the target company) subsequent to such date of determination and at or prior to the consummation of the relevant Limited Condition Acquisition, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition and the related transactions are permitted hereunder and (y) such baskets or ratios shall not be tested at the time of consummation of such Limited Condition Acquisition or related transactions; *provided*, further, that if the Parent elects to have such determinations occur at the time of entry into such definitive agreement, any such transactions (including any Incurrence of Indebtedness and the use of proceeds thereof) shall be deemed to have occurred on the date the definitive agreements are entered and outstanding thereafter for purposes of calculating any baskets or ratios under this Indenture after the date of such agreement and before the consummation of such Limited Condition Acquisition.

Section 4.19. Stay, Extension and Usury Laws. The Issuer and each of the Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.20. Taxes. The Parent and the Issuer shall:

(a) pay, and shall cause each of their Subsidiaries to pay, prior to delinquency, all material Taxes of the Parent, Issuer and their subsidiaries, except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes; and

(b) be, and each other Guarantor shall be, at all times solely resident for Tax purposes in its place of incorporation and shall not have a permanent establishment or other taxable presence in any other jurisdiction and neither of the Issuer nor any of the Guarantors shall change its jurisdiction of residence for Tax purposes or establish a permanent establishment or other taxable presence in any jurisdiction other than its jurisdiction of incorporation.

Section 4.21. Corporate Existence. Subject to Article V, the Issuer and the Parent shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(a) their corporate existence, and the corporate, partnership or other existence of each of their Subsidiaries (save for a solvent liquidation, merger or winding-up of any such Subsidiary that is not a Guarantor), in accordance with the respective organizational documents (as the same may be amended from time to time) of the Issuer, the Parent, or any such Subsidiary; and

(b) the rights (charter and statutory), licenses and franchises of the Parent and its Subsidiaries; *provided*, however, that the Parent shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of their Subsidiaries, if the Board of Directors of the Parent shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Parent and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders.

Section 4.22. Center of Main Interests and Establishments. Each of the Parent and the Issuer (and any successor Person), for the purposes of the Insolvency (Amendment) (EU Exit) Regulations 2019 (SI 2019/146), and each of the Guarantors, for the purposes of Council Regulation (EU) 2015/848 of May 20, 2015 on insolvency proceedings (recast) (the "EU Insolvency Regulation") or otherwise, will ensure that its "centre of main interests" (as that term is used in Article 3(1) of the EU Insolvency Regulation) is situated in its original jurisdiction of incorporation and ensure that it has no "establishment" (as that term is used in Article 2(b) of the EU Insolvency Regulation) in any other jurisdiction.

Section 4.23. Ratings. The Issuer and the Guarantors will use their commercially reasonable efforts to maintain an instrument rating from one of Moody's, Fitch or S&P.

Section 4.24. Use of Proceeds.

The Parent and its Restricted Subsidiaries shall apply, or cause to be applied, any proceeds (net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and expenses actually Incurred in connection with the transactions contemplated by the Lock-Up Agreement) received from such issuance or sale of the Initial Notes in Spain and/or France.

ARTICLE V

SUCCESSOR COMPANY

Section 5.01. Merger and Consolidation.

(a) The Issuer. Neither the Issuer nor the Parent will consolidate with or merge with or into, or assign, convey, transfer, lease or otherwise dispose of all or substantially all of its assets, in one transaction or a series of related transactions to, any Person, unless:

(i) the resulting, surviving or transferee Person (the "*Successor Company*") will be a Person organized and existing under the laws of any member state of the European Union, the United Kingdom or the United States of America, any State of the United States or the District of Columbia, Canada or any province or territory of Canada, Norway or Switzerland and the Successor Company (if other than the Issuer or the Parent) will expressly assume, (a) by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Issuer under the Notes and this Indenture and (b) all obligations of the Issuer under the Security Documents (and, to the extent required, by the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement);

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(iii) immediately after giving effect to such transaction, only to the extent it involves the Parent, either (1) the Successor Company would be able to Incur at least an additional $1.00 of Indebtedness pursuant to the Fixed Charge Coverage Ratio contained in Section 4.01(a) or (2) the Fixed Charge Coverage Ratio of the Successor Company and its consolidated Subsidiaries would not be less than the Fixed Charge Coverage Ratio of the Parent and its Restricted Subsidiaries immediately prior to giving effect to such transaction; and

(iv) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture and an Opinion of Counsel to the effect that such supplemental indenture (if any) has been duly authorized, executed and delivered and is a legal, valid and binding agreement enforceable against the Successor Company (in each case, in form and substance reasonably satisfactory to the Trustee); *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact.

Any Indebtedness that becomes an obligation of the Parent or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this Section 5.01, and any Refinancing Indebtedness with respect thereto, shall be deemed to have been Incurred in compliance with Section 4.01.

For purposes of this Section 5.01, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Issuer, which properties and assets, if held by the Issuer instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture but in the case of a lease of all or substantially all its assets, the predecessor company will not be released from its obligations under this Indenture or the Notes.

The foregoing provisions of this Section 5.01(a) (other than Section 5.01(a)(ii)) shall not apply to (i) any transactions which constitute an Asset Disposition if the Issuer has complied with Section 4.05 or (ii) the creation of a new subsidiary as a Restricted Subsidiary.

(b) Guarantors. No Guarantor (other than a Guarantor whose guarantee is to be released in accordance with the terms of this Indenture) may: (i) consolidate with or merge with or into any Person (whether or not such Guarantor is the surviving corporation); (ii) sell, assign, convey, transfer, lease or otherwise dispose of, all or substantially all of the assets of such Guarantor and its Restricted Subsidiaries taken as a whole, in one transaction or a series of related transactions, to any Person; or (iii) permit any Person to merge with or into it unless:

A. the other Person is the Issuer or any other Restricted Subsidiary of the Parent that is a Guarantor or becomes a Guarantor;

B. (1) either (x) a Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all of the obligations of the Guarantor under its Guarantee, this Indenture (pursuant to a supplemental indenture executed and delivered in a form reasonably satisfactory to the Trustee), and the Security Documents (and, to the extent required, by the Intercreditor Agreement or any Additional Intercreditor Agreements); and (2) immediately after giving effect to the transaction, no Default or Event of Default shall have occurred and is continuing; or

C. the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of a Guarantor or the sale or disposition of all or substantially all the assets of a Guarantor (in each case other than to the Parent or a Restricted Subsidiary) otherwise permitted by this Indenture,

provided however, that the prohibition in Section 5.01(b)(i), Section 5.01(b)(ii) and Section 5.01(b)(iii) shall not apply to the extent that compliance with clauses (A) or (B)(1) could give rise to or result in: (1) any breach or violation of statutory limitations, corporate benefit, financial assistance, fraudulent preference, thin capitalization rules, capital maintenance rules, guidance and coordination rules or the laws rules or regulations (or analogous restriction) of any applicable jurisdiction; (2) any risk or liability for the officers, directors or (except in the case of a Restricted Subsidiary that is a partnership) shareholders of such Restricted Subsidiary (or, in the case of a Restricted Subsidiary that is a partnership, directors or shareholders of the partners of such partnership); or (3) any cost, expense, liability or obligation (including with respect to any Taxes) other than reasonable out of pocket expenses.

(c) The provisions set forth in this Section 5.01 shall not restrict (and shall not apply to): (i) any Restricted Subsidiary that is not a Guarantor (or the Issuer) from consolidating with, merging or liquidating into or transferring all or substantially all of its properties and assets to the Issuer, a Guarantor or any other Restricted Subsidiary that is not a Guarantor; (ii) a Guarantor from merging or liquidating into or transferring all or part of its properties and assets to the Issuer or another Guarantor; (iii) a Guarantor from transferring all or part of its properties and assets to a Restricted Subsidiary that is not a Guarantor (or the Issuer) in order to comply with any law, rule, regulation or order, recommendation or directions of, or agreement with, any regulatory authority having jurisdiction over the Parent or any of its Restricted Subsidiaries; (iv) any consolidation or merger of the Issuer into any Guarantor; *provided* that, if the Issuer is not the surviving entity of such merger or consolidation, the relevant Guarantor will assume the obligations of the Issuer under the Notes and this Indenture and Section 5.01(a)(i) and Section 5.01(a)(iv) shall apply to such transaction and (v) the Issuer or any Guarantor from consolidating into or merging or combining with an Affiliate incorporated or organized for the purpose of changing the legal domicile of such entity, reincorporating such entity in another jurisdiction, or changing the legal form of such entity; *provided*, *however*, that Section 5.01(a)(i), Section 5.01(a)(ii), Section 5.01(a)(iv) or Section 5.01(b)(iii)(A) and Section 5.01(b)(iii)(B), as the case may be, shall apply to any such transaction.

ARTICLE VI

DEFAULTS AND REMEDIES

Section 6.01. Events of Default. Each of the following is an "Event of Default" under this Indenture:

(a) default in any payment of interest on any Note issued under this Indenture when due and payable, continued for 30 days;

(b) default in the payment of the principal amount of or premium, if any, on any Note issued under this Indenture when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(c) failure by the Issuer or any Guarantor to comply with its obligations under Section 5.01;

(d) failure by the Issuer or any Guarantor to comply for 30 days after written notice by the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes with its obligation to make a Change of Control Offer under Section 4.14;

(e) failure by the Parent or any of its Restricted Subsidiaries to comply for 60 days after notice by the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes with its other agreements contained in this Indenture (in each case, other than a default in performance, or breach of, a covenant or agreement specifically addressed in clauses (a) to (d) of this Section 6.01);

(f) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Parent or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Parent or any of its Restricted Subsidiaries) other than Indebtedness owed to the Parent or a Restricted Subsidiary whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default:

(i) is caused by a failure to pay principal at stated maturity on such Indebtedness, immediately upon the expiration of the grace period provided in such Indebtedness ("*payment default*"); or

(ii) results in the acceleration of such Indebtedness prior to its maturity (the "*cross acceleration provision*"),

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $10.0 million or more;

(g) the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;

(iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) admits in writing that it is unable to pay its debts as they become due;

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in a proceeding in which the Issuer or any such other Restricted Subsidiary, that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; or

(iii) orders the winding up or liquidation of the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary,

and, in the case of any of (i), (ii) or (iii) of this Section 6.01(h), the order or decree remains un-stayed and in effect for 60 consecutive days;

(i) failure by the Issuer or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $10.0 million (exclusive of any amounts that a solvent insurance company has acknowledged liability for), which judgments are not paid, discharged or stayed for a period of 60 days after the judgment becomes final (the "*judgment default provision*");

(j) any Note Guarantee ceases to be in full force and effect (other than in accordance with the terms of such Note Guarantee or this Indenture) or is declared invalid or unenforceable in a judicial proceeding or any Guarantor denies or disaffirms in writing its obligations under its Note Guarantee and any such Default continues for 10 days;

(k) any security interest under the Security Documents on any Collateral having a fair market value in excess of $5.0 million shall, at any time, cease to be in full force and effect (other than in accordance with the terms of the relevant Security Document, the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement, and this Indenture) for any reason other than the satisfaction in full of all obligations under this Indenture or the release or amendment of any such security interest in accordance with the terms of this Indenture, the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement or such Security Document or any such security interest created thereunder shall be declared invalid or unenforceable or the Parent, the Issuer or any other Restricted Subsidiary shall assert in writing that any such security interest is invalid or unenforceable and any such Default continues for 10 days;

(l) any default under any ABL Facility of the Parent or any of its Restricted Subsidiaries involving a principal amount of Indebtedness of $10.0 million or more in the aggregate, the effect of which is to permit the lenders under such ABL Facility to cause the Indebtedness under such ABL Facility to become due or to require the prepayment, repurchase, defeasance or redemption of the Indebtedness under such ABL Facility prior to its stated maturity; provided that this Section 6.01(l) shall not apply to the Indebtedness under any such ABL Facility that becomes due as a result of a refinancing thereof permitted by this Indenture; or

(m) the Lock-Up Agreement is terminated in accordance with its terms other than (x)(a) pursuant to clause 9.1(a) of the Lock-Up Agreement or (b) pursuant to clauses 9.1(b)(iii), 9.1(b)(iv), 9.1 (c)(iv), or 9.1(c)(v) of the Lock-Up Agreement as a result of a breach or misrepresentation, as applicable, by the holders of the Notes in their capacity as "Consenting Noteholders" under the Lock-Up Agreement or (y) pursuant to clause 9.2 (c) of the Lock-Up Agreement.

However, a default under Section 6.01(c), Section 6.01(d), Section 6.01(e), Section 6.01(f), Section 6.01(i), Section 6.01(k) or Section 6.01(l) will not constitute an Event of Default until the Trustee or the Holders of 25% in principal amount of the outstanding Notes under this Indenture notify the Parent of the default and, with respect to Section 6.01(d), Section 6.01(e), Section 6.01(i) or Section 6.01(k), the Parent does not cure such default within the time specified in Section 6.01(d), Section 6.01(e), Section 6.01(i) or Section 6.01(k), as applicable, after receipt of such notice.

The Issuer shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers' Certificate of any Event of Default or any event which with the giving of notice or the lapse of time would become an Event of Default, its status and what action the Issuer is taking or proposes to take with respect thereto.

Section 6.02. Remedies Upon Event of Default. Holders of the Notes may not enforce this Indenture or the Notes except as provided in this Indenture.

Notwithstanding anything to the contrary herein, (i) if a Default occurs for a failure to deliver a required certificate in connection with another default (an "*Initial Default*") then at the time such Initial Default is cured, such Default for a failure to report or deliver a required certificate in connection with the Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in Section 4.09, or otherwise to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the delivery (prior to acceleration in respect of the relevant breach) of any such report required by Section 4.09 or notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in this Indenture.

Section 6.03. Acceleration. (a) If an Event of Default (other than an Event of Default described in Section 6.01(g) and Section 6.01(h)) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes under this Indenture may declare all the Notes under this Indenture to be due and payable by written notice to the Issuer (and to the Trustee if such notice is given by the Holders). Upon such a declaration, such principal, premium (including Applicable Premium and Initial Notes Repayment Date Premium, if such premia would have been payable if the Issuer had issued a notice of redemption of the Notes on the date of such declaration) and accrued and unpaid interest will be due and payable immediately. In the event of a declaration of acceleration of the Notes because an Event of Default described in Section 6.01(f) has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to Section 6.01(f) shall be remedied or cured, or waived by the holders of the Indebtedness, or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, within 30 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

(b) If an Event of Default described in Section 6.01(g) or Section 6.01(h) occurs and is continuing, the principal of, premium (including Applicable Premium and Initial Notes Repayment Date Premium, if such premia would have been payable if the Issuer had issued a notice of redemption of the Notes on the date of such declaration), if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

Section 6.04. Other Remedies. Subject to Articles XI and XII and to the duties of the Trustee as provided for in Article VII, if an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, premium (including Applicable Premium and Initial Notes Repayment Date Premium, if such premia would have been payable if the Issuer had issued a notice of redemption of the Notes on the date of such declaration), if any, or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

Section 6.05. Waiver of Past Defaults. The Holders of a majority in principal amount of the outstanding Notes under this Indenture may waive all past or existing Defaults or Events of Default (except with respect to nonpayment of principal, premium, interest or Additional Amounts, if any) and rescind any such acceleration with respect to such Notes and its consequences if rescission would not conflict with any judgment or decree of a court of competent jurisdiction and provided the fees and expenses of the Trustee have been paid.

Section 6.06. Control by Majority. The Holders of a majority in principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability; *provided*, *however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action under this Indenture, the Trustee will be entitled to indemnification and/or security satisfactory to the Trustee in its sole discretion against all fees, losses, claims, liabilities and expenses (including attorney's fees and expenses) caused by taking or not taking such action.

Section 6.07. Limitation on Suits. (i) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

A. such Holder has previously given the Trustee written notice that an Event of Default is continuing;

B. Holders of at least 25% in principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;

C. such Holders have offered the Trustee security or indemnity satisfactory to it against any cost, loss, liability or expense;

D. the Trustee has not complied with such request within 60 days after the receipt of the written request and the offer of security or indemnity; and

E. the Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a written direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

(ii) A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. The Trustee shall not have an obligation to ascertain whether Holders' actions are unduly prejudicial to other Holders.

Section 6.08. Rights of Holders to Receive Payment. Subject to Section 9.02, the right of any Holder to receive payment of principal of and interest on the Notes held by such Holder, on or after the respective due dates expressed or provided for in

the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of each Holder of an outstanding Note affected.

Section 6.09. Collection Suit by Trustee. If an Event of Default specified in Section 6.01(a) or Section 6.01(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any other obligor on the Notes for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.06.

Section 6.10. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents and take such actions as may be necessary or advisable (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes) or any Guarantor, their creditors or their property and, shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes of any series or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.11. Priorities. Subject to the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement, if the Trustee or the Security Agent collects any money pursuant to this Article VI or from the enforcement of any Security Document, it shall pay out (or in the case of the Security Agent, it shall pay to the Trustee to pay out) the money in the following order:

FIRST: to the Trustee, the Security Agent and the Agents and their agents and attorneys for amounts due under Section 7.02, Section 7.06 and Section 11.06, including payment of all fees, costs, compensation, disbursements, expenses and liabilities incurred, and all advances made, by the Trustee, the Agents and the Security Agent (as the case may be) and the costs and expenses of collection;

SECOND: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, interest and Additional Amounts, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, interest and Additional Amounts, if any, respectively;

THIRD: to the Issuer, any Guarantor or to such party as a court of competent jurisdiction shall direct.

The Issuer shall provide the Trustee with any additional information in its possession necessary for the Trustee to make the payments mentioned above, upon request.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.11. At least 15 days before such record date, the Trustee shall mail or deliver to each Holder and the Issuer a notice that states the record date, the payment date and amount to be paid.

Section 6.12. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as the Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by the Trustee or a Paying Agent, a suit by a Holder pursuant to Section 6.08 or a suit by Holders of more than 10% in principal amount of the Notes then outstanding.

Section 6.13. Waiver of Stay or Extension Laws. The Issuer (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

Section 6.14. Restoration of Rights and Remedies. If the Trustee or the Security Agent or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or the Security Agent or to such Holder, then and in every such case, subject to any determination in such proceeding, the Issuer, the Guarantors, the Trustee, the Security Agent and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee, the Security Agent and the Holders shall continue as though no such proceeding had been instituted.

Section 6.15. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.11, no right or remedy herein conferred upon or reserved to the Trustee or the Security Agent or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.16. Delay or Omission Not Waiver. No delay or omission of the Trustee or the Security Agent or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VI or by law to the Trustee or to the Holders, may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.17. Indemnification of Trustee. Prior to taking any action under this Article VI, the Trustee shall be entitled to indemnification or other security satisfactory to it in its sole discretion against all losses, liabilities and expenses caused by taking or not taking such action.

ARTICLE VII

TRUSTEE

Section 7.01. Duties of Trustee . (i) If an Event of Default, of which a Responsible Officer of the Trustee has received written notice, has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(ii) Except during the continuance of an Event of Default:

A. the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; *provided* that to the extent the duties of the Trustee under this Indenture and the Notes may be qualified, limited or otherwise affected by the provisions of the Notes Documents, the Trustee shall be required

to perform those duties only as so qualified, limited or affected, and shall be held harmless and shall not incur any liability of any kind for so acting; and

B. the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, with respect to certificates or opinions specifically required to be furnished to it hereunder, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein) and shall be entitled to seek advice from legal counsel in relation thereto.

(iii) The Trustee may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

A. this Section 7.01(iii) does not limit the effect of Section 7.01(ii);

B. the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts; and

C. the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.03, Section 6.05 or Section 6.06.

(iv) Every provision of this Indenture that in any way relates to the Trustee is subject to Section 7.01(i), Section 7.01(ii) and Section 7.01(iii).

(v) No provision of this Indenture or the other Notes Documents shall require the Trustee to expend or risk its own funds or otherwise incur liability in the performance of any of its duties hereunder or under the other Notes Documents or to take or omit to take any action under this Indenture or under the other Notes Documents or take any action at the request or direction of Holders if it has grounds for believing that repayment of such funds is not assured to it or it does not receive indemnity or security satisfactory to it in its sole discretion against any loss, liability or expense which might be incurred by it in compliance with such request or direction nor shall the Trustee be required to do anything which is illegal or contrary to applicable laws. The Trustee will not be liable to the Holders if prevented or delayed in performing any of its obligations or discretionary functions under this Indenture by reason of any present or future law applicable to it, by any governmental or regulatory authority or by any circumstances beyond its control.

(vi) The Trustee shall not be liable for interest or investment income on any money received by it except as the Trustee may agree in writing with the Issuer.

(vii) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(viii) Each Holder, by its acceptance of any Notes and the Note Guarantees consents and agrees to the terms of the Notes Documents as the same may be in effect or as may be amended from time to time in accordance with their terms and authorizes and directs the Trustee to enter into and perform its obligations and exercise its rights under the Notes Documents in accordance therewith, to bind the Holders on the terms set forth in the Notes Documents and to execute any and all documents, amendments, waivers, consents, releases or other instruments authorized or required to be executed by it pursuant to the terms thereof.

(ix) The Trustee shall not be deemed to have notice of any matter (including, without limitation, Events of Default) unless a Responsible Officer has written notice or actual knowledge.

Section 7.02. Rights of Trustee .

(i) The Trustee may refrain without liability from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion, based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction or, to the extent applicable, the State of New York. Furthermore, the Trustee may also refrain without liability from taking such action if it would otherwise render it liable to any person in that jurisdiction, the State of New York or if, in its opinion based upon such legal advice, it would not have the power to take such action in that jurisdiction by virtue of any applicable law in that jurisdiction, in the State of New York or if it is determined by any court or other competent authority in that jurisdiction, in the State of New York that it does not have such power.

(ii) The Trustee may conclusively rely and shall be fully protected in relying on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(iii) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel.

(iv) The Trustee may act through attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney, delegate, depositary, or agent appointed with due care.

(v) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture or any other Notes Document, subject to Section 7.01(iii).

(vi) The Trustee may retain professional advisers to assist it in performing its duties under this Indenture or any Notes Document. The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel or professional advisors even if such advice or opinion is subject to a limitation of liability, whether by a monetary cap or otherwise, or limited in scope.

(vii) The Trustee shall not be bound to make any investigation into the facts or matters stated in any Officer's Certificate, Opinion of Counsel, or any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its sole and absolute discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer and the Trustee shall incur no liability of any kind by reason of such inquiry or investigation.

(viii) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee indemnity or other security satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred by it in compliance with such request, order or direction.

(ix) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders, each representing less than the majority in aggregate principal amount of the Notes then outstanding, pursuant to the provisions of this Indenture, the Trustee, in its sole discretion, may determine what action, if any, shall

be taken and shall be held harmless and shall not incur any liability for its failure to act until such inconsistency or conflict is, in its reasonable opinion, resolved.

(x) The Trustee shall have no duty to inquire as to the performance of the Issuer with respect to the covenants contained in Article IV. Delivery of reports, information and documents to the Trustee under Section 4.09 is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

(xi) The Trustee shall not have any obligation or duty to monitor, determine or inquire as to compliance, and shall not be responsible or liable for compliance with restrictions on transfer, exchange, redemption, purchase or repurchase, as applicable, of minimum denominations imposed under this Indenture or under applicable law or regulation with respect to any transfer, exchange, redemption, purchase or repurchase, as applicable, of any interest in any Notes.

(xii) If any Guarantor is substituted to make payments on behalf of the Issuer pursuant to Article X, the Issuer shall promptly notify the Trustee of such substitution.

(xiii) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified or secured to its satisfaction, are extended to, and shall be enforceable by the Trustee in each of its capacities hereunder and under the other Notes Documents, by the Security Agent and each Agent in their various capacities hereunder, custodian and other Person employed to act as agent hereunder. Each of the Trustee, the Security Agent, and each Agent shall not be liable for acting in good faith on instructions believed by it to be genuine and from the proper party.

(xiv) The Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture.

(xv) The permissive rights of the Trustee to take the actions permitted by this Indenture will not be construed as an obligation or duty to do so.

(xvi) Anything in this Indenture to the contrary notwithstanding, in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits, loss of business, goodwill or opportunity of any kind), even if foreseeable and even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(xvii) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of, or caused by, directly or indirectly, forces beyond its control, including, without limitation, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

(xviii) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of the individuals or titles of officers authorized at such time to take specified actions pursuant to this Indenture or the Notes Documents, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(xix) No provision of this Indenture shall require the Trustee to do anything which, in its opinion, may be illegal or contrary to applicable law or regulation.

(xx) The Trustee shall not be required to take notice or be deemed to have notice of any Default or Event of Default hereunder unless a Responsible Officer has actual knowledge thereof or is specifically notified in writing

of such Default or Event of Default by the Issuer or by the Holders of at least 25% of the aggregate principal amount of Notes then outstanding, at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(xxi) The Trustee and the Paying Agent shall be entitled to make payments net of any taxes or other sums required by any applicable law to be withheld or deducted.

(xxii) At any time that the security granted pursuant to the Security Documents has become enforceable and the Holders have given a written direction to the Trustee to enforce such security, the Trustee is not required to give any direction to the Security Agent with respect thereto unless it has been indemnified, secured and/or prefunded in accordance with Section 7.01(v). In any event, in connection with any enforcement of such security, the Trustee is not responsible for:

(i) any failure of the Security Agent to enforce such security within a reasonable time or at all;

(ii) any failure of the Security Agent to pay over the proceeds of enforcement of the Collateral;

(iii) any failure of the Security Agent to realize such security for the best price obtainable;

(iv) monitoring the activities of the Security Agent in relation to such enforcement;

(v) taking any enforcement action itself in relation to such security;

(vi) agreeing to any proposed course of action by the Security Agent which could result in the Trustee incurring any liability for its own account; or

(vii) paying any fees, costs or expenses of the Security Agent.

(xxiii) The Trustee may assume without inquiry in the absence of actual knowledge of a Responsible Officer that the Issuer, the Guarantors or any Holder are duly complying with their obligations contained in this Indenture required to be performed and observed by each of them, and that no Default or Event of Default or other event which would require repayment of the Notes has occurred.

(xxiv) Unless ordered to do so by a court of competent jurisdiction, the Trustee shall not be required to disclose to any Holder or any third party any confidential financial or other information made available to the Trustee by the Issuer and no Holder shall be entitled to take any action to obtain from the Trustee any such information.

Section 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes or the Collateral and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee. For the avoidance of doubt, any Agent, Paying Agent, Transfer Agent, Authenticating Agent or Registrar may do the same with like rights.

Section 7.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes or the Note Guarantees, any other Notes Document, the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement, it shall not be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture or the Intercreditor Agreement, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and it shall not be responsible for any statement of the Issuer in this Indenture or any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication if signed by the Trustee.

Section 7.05. Notice of Defaults. If a Default or Event of Default occurs and is continuing and a Responsible Officer of the Trustee is informed in writing of such occurrence by the Issuer, the Trustee must give notice of the Default to the Holders within 60 days after being notified by the Issuer. Except in the case of a Default in payment of principal of or interest or premium, if any, on any Note, the Trustee may withhold the notice if and so long as the Trustee determines that withholding the notice is in the interests of Holders.

Section 7.06. Compensation and Indemnity. The Issuer, or, upon the failure of the Issuer to pay, each Guarantor, jointly and severally, shall pay to the Trustee, the Security Agent and each Agent from time to time such compensation as the Issuer and Trustee, the Security Agent and each Agent may from time to time agree for its acceptance of this Indenture and services hereunder and under the Notes Documents. The Trustee's, the Security Agent's and each Agent's compensation shall not be limited by any law on compensation of a trustee of an express trust.

In the event of the occurrence of an Event of Default or the Trustee considering it expedient or necessary or being requested by the Issuer to undertake duties which the Trustee reasonably determines to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee, the Issuer shall pay to the Trustee such additional remuneration for such duties as may be agreed.

The Issuer and each Guarantor, jointly and severally, shall reimburse the Trustee, the Security Agent and each Agent promptly upon request for all properly incurred disbursements, advances and expenses incurred or made by it), including costs of collection, in addition to the compensation for its services. Such expenses shall include the properly incurred compensation and expenses, disbursements and advances of the Trustee's and the Security Agent's agents, counsel, accountants and experts. The Issuer and each Guarantor, jointly and severally, shall indemnify the Trustee, the Security Agent, the Agents and their respective officers, directors, agents and employees and hold them harmless against any and all loss, liability or expenses (including attorneys' fees, disbursements and expenses) incurred by or in connection with the acceptance or administration of its duties under this Indenture and the Notes Documents, including the costs and expenses of enforcing this Indenture against the Issuer (including this Section 7.06) and defending itself against any claim (whether asserted by the Issuer or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder or under the Notes Documents, as the case may be. The Issuer and each Guarantor, jointly and severally, shall indemnify the Trustee, the Security Agent and each Agent and their respective officers, directors, agents and employees for all taxes paid by the Trustee, the Security Agent and each Agent, or required to be withheld or deducted from a payment to any Person entitled to payment hereunder, and any reasonable expenses arising therefrom or with respect thereto.

The Trustee and the Security Agent shall notify the Issuer of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; *provided*, *however*, that any failure so to notify the Issuer shall not relieve the Issuer or any Guarantor of their indemnity obligations hereunder or under any other Notes Documents, as the case may be. Except in cases where the interests of the Issuer and the Trustee and the Security Agent may be adverse, the Issuer shall defend the claim and the indemnified party shall provide reasonable cooperation at the Issuer's and any Guarantor's expense in the defense. Notwithstanding the foregoing, such indemnified party may, in its sole discretion, assume the defense of the claim against it and the Issuer and any Guarantor shall, jointly and severally, pay the properly incurred fees and expenses of the indemnified party's defense. Such indemnified parties may have separate counsel of their choosing and the Issuer and any Guarantor, jointly and severally, shall pay the properly incurred fees and expenses of such counsel. The Issuer need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct, gross negligence or fraud.

To secure the Issuer's and any Guarantor's payment obligations in this Section 7.06, the Trustee, the Security Agent, and the Agents have a lien prior to the Notes on all money or property held or collected by the Trustee or Paying Agent other than money or property held in trust to pay principal of and interest on particular Notes.

The Issuer's and any Guarantor's payment obligations pursuant to this Section 7.06 and any lien arising thereunder shall survive the satisfaction or discharge of this Indenture, payment of the Notes in full, any rejection or termination of this Indenture under any Bankruptcy Law or the resignation or removal of the Trustee, the Security Agent, and the Agents. Without prejudice to any other rights available to the Trustee, the Security Agent, and the Agents under applicable law, when the Trustee and the Paying Agents incur expenses after the occurrence of a Default specified in Section 6.01(e) and Section 6.01(f) with respect to the Issuer, the expenses

and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under the Bankruptcy Law.

For the avoidance of doubt, the rights, privileges, protections, immunities and benefits given to the Trustee and the Security Agent in this Section 7.06, including its right to be indemnified, are extended to, and shall be enforceable by the Trustee and the Security Agent in each of its capacities hereunder and by each Agent, custodian and other Person employed with due care to act as agent hereunder. For purposes of this Section 7.06, "Trustee" and "Security Agent" shall include any predecessor Trustee or Security Agent; *provided*, *however*, that the gross negligence or willful misconduct of any Trustee or the Security Agent shall not affect the rights of any other Trustee or Security Agent hereunder.

Section 7.07. Replacement of Trustee. (i) The Trustee may resign at any time by so notifying the Issuer. The Holders of a majority in principal amount of the Notes then outstanding may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Issuer shall be entitled to remove the Trustee or any Holder who has been a *bona fide* Holder for not less than six months may petition any court for removal of the Trustee and appointment of a successor Trustee, if:

A. the Trustee fails to comply with Section 7.11;

B. the Trustee has or acquires a conflict of interest in its capacity as Trustee that is not eliminated;

C. the Trustee is adjudged bankrupt or insolvent;

D. a receiver or other public officer takes charge of the Trustee or its property; or

E. the Trustee otherwise becomes incapable of acting as Trustee hereunder.

(ii) If the Trustee resigns, is removed pursuant to Section 7.07(i) or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

(iii) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture and the Notes Documents. The successor Trustee shall deliver a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the Trustee hereunder have been paid and subject to the lien provided for in Section 7.06.

(iv) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, (i) the retiring Trustee or the Holders of 10% in principal amount of the Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee, or (ii) the retiring Trustee may appoint a successor Trustee at any time prior to the date on which a successor Trustee takes office; *provided* that such appointment is reasonably satisfactory to the Issuer.

(v) Notwithstanding the replacement of the Trustee pursuant to this Section 7.07, the Issuer's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

(vi) For the avoidance of doubt, the rights, privileges, protections, immunities and benefits given to the Trustee in this Article VII, including its right to be indemnified, are extended to, and shall be enforceable by each Agent employed to act hereunder.

Section 7.08. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have.

Section 7.09. Certain Provisions. Each Holder by accepting a Note authorizes and directs on his or her behalf the Trustee to enter into and to take such actions and to make such acknowledgements as are set forth in this Indenture or other documents entered into in connection therewith.

Section 7.10. Agents; General Provisions.

(i) The rights, powers, duties and obligations and actions of each Agent under this Indenture are several and not (i) joint or (ii) joint and several.

(ii) In the event that instructions given to any Agent are not reasonably clear, then such Agent shall be entitled to seek clarification from the Issuer or other party entitled to give the Agents instructions under this Indenture by written request promptly and in any event within one Business Day of receipt by such Agent of such instructions. If an Agent has sought clarification in accordance with this Section 7.10, then such Agent shall be entitled to take no action until such clarification is provided, and shall not incur any liability for not taking any action pending receipt of such clarification.

(iii) No Agent shall be under any duty or other obligation towards, or have any relationship of agency or trust for or with, any person other than the Issuer.

(iv) The Issuer shall notify each Agent in the event that they determine that any payment to be made by an Agent under the Notes is a payment which could be subject to FATCA Withholding if such payment were made to a recipient that is generally unable to receive payments free from FATCA Withholding, and the extent to which the relevant payment is so treated, provided, however, that the Issuer's obligation under this Section 7.10(iv) shall apply only to the extent that such payments are so treated by virtue of characteristics of the Issuer, the Notes, or both.

(v) Notwithstanding any other provision of this Indenture, each Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Notes for or on account of any Tax, if and only to the extent so required by applicable law, in which event the Agent shall make such payment after such deduction or withholding has been made and shall account to the relevant Authority within the time allowed for the amount so deducted or withheld or, at its option, shall reasonably promptly after making such payment return to the Issuer the amount so deducted or withheld, in which case, the Issuer shall so account to the relevant Authority for such amount.

(vi) In the event that the Issuer determines at its sole discretion that any deduction or withholding for or on account of any Tax will be required by applicable law in connection with any payment due to any of the Agents on any Notes, then the Issuer will be entitled to redirect or reorganize any such payment in any way that it sees fit in order that the payment may be made without such deductions or withholding provided that, any such redirected or reorganized payment is made through a recognized institution of international standing and otherwise made in accordance with this Indenture. The Issuer will promptly notify the Agents and the Trustee of any such redirection or reorganization

(vii) For the purposes of Section 7.10(iv) through to Section 7.10(vi), the following definitions apply:

"Authority" means any competent regulatory, prosecuting, Tax or governmental authority in any jurisdiction.

"FATCA Withholding" means any withholding or deduction required pursuant to an agreement described in section 1471(b) of the Code, or otherwise imposed pursuant to sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or any law implementing an intergovernmental approach thereto.

(viii) [Reserved].

(ix) The Issuer and the Agents acknowledge and agree that in the event of a Default or Event of Default, the Trustee may, by notice in writing to the Issuer and the Agents, require that the Agents act as agents of, and take instructions exclusively from, the Trustee. Until they have received such written notice from the Trustee, the Agents shall act solely as agents of the Issuer and shall have no fiduciary duty, or owe any obligation, towards any person other than the Issuer.

(x) Moneys held by Agents need not be segregated from other funds except to the extent required by law. Subject to Article VIII, the Agents hold all funds as agent subject to the terms of this Indenture and as a result money will not be held in accordance with the rules established by the Financial Conduct Authority in the Financial Conduct Authority's Handbook of rules and guidance from time to time in relation to client money, The Agents shall not be liable for any interest earned thereon.

(xi) The roles, duties and functions of the Agents are of a mechanical nature and each Agent shall only perform those acts and duties as specifically set out in this Indenture and no other acts, covenants, obligations or duties shall be implied or read into this Indenture against any of the Agents.

(xii) No Agent shall be required to make any payment of the principal, premium or interest payable pursuant to this Indenture unless and until it has received the full amount to be paid in accordance with the terms of this Indenture. To the extent that an Agent has made such payment with the prior written consent of the Issuer and for which it did not receive the full amount, the Issuer will reimburse the Agent the full amount of any shortfall.

(xiii) No Agent shall have any duty or obligation to monitor the Issuer's or any other party's compliance with the terms of this Indenture or to take any steps to ascertain whether any Default or Event of Default or other event which would require repayment of the Notes has occurred.

Section 7.11. Eligibility; Disqualification. There will at all times be a Trustee hereunder that is a corporation organized and doing business in England and Wales, the European Union or the United States of America that is authorized to exercise corporate trustee power; and that is a corporation which is generally recognized as a corporation which customarily performs such corporate trustee roles and provides such corporate trustee services in transactions similar in nature to the offering of the Notes.

ARTICLE VIII

DISCHARGE OF INDENTURE; DEFEASANCE

Section 8.01. Discharge of Liability on Notes; Defeasance. (a) This Indenture will be discharged and cease to be of further effect (except as to surviving rights of conversion or transfer or exchange of the Notes, as expressly provided for in this Indenture) as to all outstanding Notes when (1) either (a) all the Notes previously authenticated and delivered (other than certain lost, stolen or destroyed Notes and certain Notes for which provision for payment was previously made and thereafter the funds have been released to the Issuer) have been delivered to the Paying Agent for cancellation; or (b) all Notes not previously delivered to the Paying Agent for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year or (iii) are to be called for redemption within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee or Paying Agent in the name, and at the expense, of the Issuer; (2) the Issuer has deposited or caused to be deposited with the

Trustee (or another entity designated by the Trustee for this purpose) U.S. dollars or U.S. dollar-denominated Government Obligations, or a combination thereof, as applicable, in an amount sufficient, without consideration of reinvestment, to pay and discharge the entire indebtedness on the Notes not previously delivered to the Paying Agent for cancellation, for principal, premium, if any, and interest to the date of deposit (in the case of Notes that have become due and payable), or to the Stated Maturity or redemption date, as the case may be; (3) the Issuer has paid or caused to be paid all other sums payable under this Indenture; (4) the Issuer has delivered irrevocable instructions to the Trustee to apply the funds deposited towards the payment of the Notes at maturity or on the redemption date, as the case may be; and (5) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each to the effect that all conditions precedent under this Section 8.01 relating to the satisfaction and discharge of this Indenture have been complied with; *provided* that any such counsel may rely on any Officer's Certificate as to matters of fact (including as to compliance with clauses (1), (2) and (3) of this Section 8.01). If requested in writing by the Issuer, the Trustee or Paying Agent may distribute any amounts deposited to the Holders prior to maturity or the redemption date, as the case may be, subject to Euroclear or Clearstream's applicable procedures. In such case, the payment to each Holder will equal the amount such Holder would have been entitled to receive at maturity or the relevant redemption date, as the case may be. For the avoidance of doubt, the distribution and payment to Holders prior to the maturity or redemption date as set forth above will not include any negative interest, present value adjustment, break cost or any further premium on such amounts.

(b) Subject to Section 8.01(c) and Section 8.02, the Parent at any time may terminate (i) all obligations of the Issuer and the Guarantors under the Notes, the Note Guarantees and this Indenture ("*legal defeasance option*"), and thereafter any omission to comply with such obligations shall not constitute a Default or Event of Default with respect to the Notes or (ii) their obligations under Article IV (other than Section 4.14) and under Section 5.01 (other than Section 5.01(a)(i) and Section 5.01(a)(ii)), and thereafter any omission to comply with such obligations shall not constitute a Default or an Event of Default with respect to the Notes and the events set forth in Section 6.01(d), Section 6.01(e) (other than with respect to Section 5.01(a)(i) and Section 5.01(a)(ii)), Section 6.01(f), Section 6.01(g) (other than with respect to the Issuer and Significant Subsidiaries) Section 6.01(h) (other than with respect to the Issuer), Section 6.01(i) and Section 6.01(j) shall not constitute Events of Default ("*covenant defeasance option*"). The Issuer at its option at any time may exercise its legal defeasance option notwithstanding their prior exercise of its covenant defeasance option.

If the Issuer exercises its legal defeasance option or its covenant defeasance option, each Guarantor will be released from all its obligations under its Guarantee.

Upon satisfaction of the conditions set forth herein and upon request of the Issuer, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuer terminates.

(c) Notwithstanding Section 8.01(a) and Section 8.01(b) above, the Issuer's and the Guarantors' obligations in Section 2.07, Section 2.08, Section 2.09, Section 2.10, Section 2.11, Section 2.12, Section 2.13, Section 2.14, Section 7.01, Section 7.02, Section 7.03, Section 7.06, Section 7.07 and this Article VIII, as applicable, shall survive until the Notes have been paid in full. Thereafter, the Issuer's and any Guarantors' obligations in Section 7.06, Section 8.05 and Section 8.06, as applicable, shall survive.

Section 8.02. Conditions to Defeasance. (i) The Issuer may exercise their legal defeasance option or their covenant defeasance option only if:

A. the Issuer has irrevocably deposited in trust (the "*defeasance trust*") with the Trustee (or another entity designated by the Trustee for this purpose) cash in U.S. dollars or U.S. dollar-denominated Government Obligations or a combination thereof, as applicable in an amount sufficient, without consideration of reinvestment, for the payment of principal, premium, if any, and interest on the Notes to redemption or maturity, as the case may be;

B. an Opinion of Counsel in the United States to the effect that Holders of the relevant Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and

defeasance and will be subject to U.S. federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred (and in the case of legal defeasance only, such Opinion of Counsel in the United States must be based on a ruling of the U.S. Internal Revenue Service or other change in applicable U.S. federal income tax law);

C. an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying, defrauding or preferring any creditors of the Issuer;

D. an Officer's Certificate and an Opinion of Counsel (which opinion of counsel may be subject to customary assumptions and exclusions), each stating that all conditions precedent provided for or relating to legal defeasance or covenant defeasance, as the case may be, have been complied with;

E. an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the U.S. Investment Company Act of 1940; and

F. the Issuer delivers to the Trustee all other documents or other information that the Trustee may reasonably require in connection with either defeasance option.

(ii) Before or after a deposit, the Issuer may make arrangements satisfactory to the Trustee for the redemption of Notes at a future date in accordance with Article III.

Section 8.03. Deposited Money and U.S. dollar-denominated Government Obligations to be held in Trust. Subject to Section 8.04 hereof, all money and U.S. dollar-denominated Government Obligations (including the proceeds thereof) deposited with the Trustee (or such other entity designated or appointed as agent by the Trustee for this purpose, or other qualifying trustee, collectively for purposes of this Section 8.03, the "Trustee") pursuant to Section 8.01 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

Section 8.04. Repayment to Issuer. The Trustee and the Paying Agent shall promptly turn over to the Issuer upon request any money or U.S. dollar-denominated Government Obligations held by it as provided in this Article VIII which, in the written opinion of an internationally recognized firm of independent public accountants delivered to the Trustee (which delivery shall only be required if U.S. dollar-denominated Government Obligations have been so deposited), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article VIII.

Subject to any applicable abandoned property law, the Trustee shall pay to the Issuer upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuer for payment as general creditors, and the Trustee and the Paying Agent shall have no further liability with respect to such monies.

Section 8.05. Indemnity for Government Obligations. The Issuer and the Guarantors, jointly and severally, shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. dollar-denominated Government Obligations or the principal and interest received on such U.S. dollar-denominated Government Obligations.

Section 8.06. Reinstatement. If the Trustee is unable to apply any money or U.S. dollar-denominated Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and the Guarantors' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee is permitted to apply all such money or U.S. dollar-denominated Government Obligations in accordance with this Article VIII; *provided*, *however*, that if the Issuer has made any payment of principal of or interest on any Notes because of the reinstatement of their obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. dollar-denominated Government Obligations held by the Trustee.

ARTICLE IX

AMENDMENTS AND WAIVERS

Section 9.01. Without Consent of Holders. Without the consent of any Holder, the Issuer, the Trustee and the other parties thereto, as applicable, may amend or supplement any Notes Documents to:

A. cure any ambiguity, omission, mistake, defect, error or inconsistency;

B. provide for the assumption by a successor Person of the obligations of the Issuer or any other Restricted Subsidiary under any Notes Document;

C. add to the covenants or provide for a Note Guarantee for the benefit of the Holders or surrender any right or power conferred upon the Parent or any Restricted Subsidiary;

D. make any change that would provide additional rights or benefits to the Trustee or the Holders or that does not adversely affect the rights or benefits to the Trustee or any of the Holders in any material respect under the Notes Documents;

E. make such provisions as necessary (as determined in good faith by the Board of Directors or an Officer of the Parent) for the issuance of Additional Notes;

F. to provide for any Restricted Subsidiary to provide a Note Guarantee in accordance with Section 4.01 or Section 4.08, to add Note Guarantees with respect to the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination, discharge or retaking of any Guarantee or Lien (including the Collateral and the Security Documents) or any amendment in respect thereof with respect to the Notes when such release, termination, discharge or retaking or amendment is provided for under this Indenture, the Intercreditor Agreement, the ABL Intercreditor Agreement any Additional Intercreditor Agreement, or the Security Documents;

G. [reserved]; or

H. to evidence and provide for the acceptance and appointment under this Indenture, the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement of a successor Trustee pursuant to the requirements thereof or to provide for the accession by the Trustee or the Security Agent to any Notes Document;

Section 9.02. With Consent of Holders. The Issuer and the Trustee may amend, supplement or otherwise modify the Notes Documents with the consent of Holders of at least a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and, except as otherwise stated herein, any default or compliance with any provisions thereof may be waived with the consent of the Holders of at least a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). However, without the consent of each Holder of an outstanding Note affected, an amendment or waiver may not:

A. reduce the percentage of principal amount of Notes whose Holders must consent to an amendment, waiver or modification;

B. reduce the stated rate of or extend the stated time for payment of interest on any Note;

C. reduce the principal of or extend the Stated Maturity of any Note;

D. reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed, in each case as described in Section 5 of the Notes;

E. make any Note payable in money other than that stated in the Note;

F. impair the right to institute suit for the enforcement of any Holder to receive payment of principal of and interest or Additional Amounts, if any, on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any such payment on or with respect to such Holder's Notes;

G. make any change to Section 4.13 that adversely affects the right of any Holder of such Notes in any material respect or amends the terms of such Notes in a way that would result in a loss of an exemption from any of the Taxes described thereunder or an exemption from any obligation to withhold or deduct Taxes so described thereunder unless the Parent or the applicable Payor agrees to pay Additional Amounts, if any, in respect thereof;

H. release any security interests granted for the benefit of the Holders of Notes other than in accordance with the terms of this Indenture, the Intercreditor Agreement, the ABL Intercreditor Agreement, any Additional Intercreditor Agreement, or the applicable Security Documents, or make any change to the form ABL Intercreditor Agreement attached to this Indenture as Exhibit C prior to its effective date that adversely effects of right of any Holder of such Notes thereunder in any material respect;

I. waive a Default or Event of Default with respect to the nonpayment of principal, premium or interest or Additional Amounts, if any, on the Notes (except pursuant to a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of such Notes and a waiver of the payment default that resulted from such acceleration);

J. release any Guarantor from any of its obligations under its Guarantee or this Indenture, except in accordance with the terms of this Indenture, the Intercreditor Agreement and the ABL Intercreditor Agreement; or

K. make any change in the amendment or waiver provisions which require the Holders' consent described in this sentence.

In respect of such matters described in Section 9.01 and this Section 9.02, the Trustee shall be entitled to require and rely absolutely on such evidence as it deems necessary, including Officer's Certificates and Opinions of Counsel.

For the avoidance of doubt, no amendment to or deletion of, or actions taken in compliance with, the covenants contained in this Indenture shall be deemed to impair or affect any rights of Holders of the Notes to receive payment of principal of, or premium, if any, or interest, on the Notes.

For so long as the Notes are listed on the Global Exchange Market of Euronext Dublin and the rules of such exchange so require, the Parent will publish notice of any amendment, supplement and waiver in a daily newspaper with general circulation in Ireland (which is expected to be *The Irish Times*). Such notice of any amendment, supplement and waiver may also be published on the website of Euronext Dublin (www.euronext.com/en/markets/dublin) in lieu of a daily newspaper to the extent and in the manner permitted by the rules of such exchange.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment of the Notes Documents, but it shall be sufficient if such consent approves the substance thereof. A consent to any

amendment or waiver under this Indenture by any Holder of Notes given in connection with a tender of such Holder's Notes will not be rendered invalid by such tender.

After an amendment under this Section 9.02 becomes effective, in case of Holders of Definitive Notes, the Issuer shall mail or deliver to the Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

Except as set forth in this Section 9.02, the Notes issued on the Issue Date and any Additional Notes part of the same series will be treated as a single class for all purposes under this Indenture, including with respect to waivers and amendments. For the purposes of calculating the aggregate principal amount of Notes that have consented to or voted in favor of any amendment, waiver, consent, modifications or other similar action, the Issuer (acting reasonably and in good faith) shall be entitled to select a record date as of which the Dollar Equivalent of the principal amount of any Notes shall be calculated in such consent or voting process.

Section 9.03. Revocation and Effect of Consents and Waivers.

(i) A written consent to an amendment or a waiver by a Holder shall bind the Holder and every subsequent Holder of that Note or portion of the Notes that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the written consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officer's Certificate from the Issuer certifying that the requisite number of consents have been received. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver becomes effective upon the (a) receipt by the Issuer or the Trustee of the requisite number of consents, (b) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment or waiver and (c) in the case of an amendment, execution of such amendment (or supplemental indenture) by the Issuer and the Trustee.

(ii) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their written consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding Section 9.03(i), those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

Section 9.04. Notation on or Exchange of Notes. If an amendment changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determine, the Issuer in exchange for the Note shall issue and the Trustee or an Authenticating Agent shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment.

Section 9.05. Trustee and Security Agent to Sign Amendments. The Trustee and the and Security Agent shall sign any amendment or supplement authorized pursuant to this Article IX if the amendment or supplement does not impose any personal obligations on the Trustee or the Security Agent or adversely affect the rights, duties, liabilities or immunities of the Trustee or the Security Agent under this Indenture, as applicable. If it does, the Trustee and the Security Agent may, but need not, sign it. In signing such amendment or supplement the Trustee and the Security Agent shall be entitled to receive an indemnity or security satisfactory to it and to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment or supplement complies with this Indenture, the other Notes Documents and that such amendment or supplement has been duly authorized, executed and delivered and is the legally valid and binding obligation of the Issuer and the Guarantors enforceable against them in accordance with its terms, subject to customary exceptions.

ARTICLE X

NOTE GUARANTEES

Section 10.01. Note Guarantees.

(i) Subject to this Article X, the Intercreditor Agreement and the ABL Intercreditor Agreement, each Guarantor, as primary obligor and not merely as a surety, jointly and severally, unconditionally, on a senior basis and subject to any limitations set out in any supplemental indenture, guarantees to each Holder of a Note authenticated and delivered by the Trustee (or the Authenticating Agent), to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuer hereunder or thereunder, that:

A. the principal of, Additional Amounts and premium, if any, and interest on, the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest, Additional Amounts and premium, if any, on the Notes (to the extent permitted by law) and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

B. in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(ii) To the extent permitted by the applicable law and subject to the Intercreditor Agreement and the ABL Intercreditor Agreement, each Guarantor hereby agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action or any delay or omission to assert any claim or to demand or enforce any remedy hereunder or thereunder, any waiver, surrender, release or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenant that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(iii) If any Holder or the Trustee is required by any court or otherwise to return to or for the benefit of the Issuer, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, any amount paid by either the Issuer or the Guarantors to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(iv) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand,

A. the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VI hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and

B. in the event of any declaration of acceleration of such obligations as provided in Article VI, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

(v) Each Guarantor also agrees to pay any and all costs and expenses (including properly incurred attorneys' fees, disbursements and expenses) incurred by the Trustee in enforcing any rights under this Section.

Section 10.02. Successors and Assigns. This Article X shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

Each party to this Indenture hereby agrees and undertakes to execute and deliver all such documents and do all such acts and things which are legally required to fully and effectively give effect to this Section 10.02.

Section 10.03. No Waiver. Neither a failure nor a delay on the part of the Trustee or the Holders in exercising any right, power or privilege under this Article X shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article X at law, in equity, by statute or otherwise.

Section 10.04. Modification. No modification, amendment or waiver of any provision of this Article X, nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in the same, similar or other circumstances.

Section 10.05. Execution of Supplemental Indenture for Guarantors. Each Subsidiary which is required to become a Guarantor pursuant to this Indenture shall promptly execute and deliver to the Trustee a supplemental indenture in the form attached to this Indenture as Exhibit B pursuant to which such Subsidiary shall become a Guarantor under this Article X. Concurrently with the execution and delivery of such supplemental indenture, the Issuer shall deliver to the Trustee an Opinion of Counsel and an Officer's Certificate in each case, prepared in accordance with Section 12.02. The obligations of a Guarantor executing and delivering a supplemental indenture to this Indenture providing for a Note Guarantee of the Notes under this Article X shall be subject to such limitations as are mandated under applicable laws in addition to the limitations set forth in Section 10.07 and set out in the relevant supplemental indenture.

Section 10.06. Release of the Note Guarantees. (a) The Note Guarantee of a Guarantor will terminate and release:

(1) upon a sale or other disposition (including by way of consolidation or merger) of the Capital Stock of the relevant Guarantor (whether by direct sale or sale of a holding company) or the sale or disposition of all or substantially all the assets of the Guarantor (other than to the Parent or a Restricted Subsidiary) otherwise permitted by this Indenture;

(2) in accordance with the provisions of the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement;

(3) upon defeasance or discharge of the Notes, as provided in Article VIII;

(4) as described under Article IX;

(5) as described under Section 4.08(b);

(6) as a result of a transaction permitted by Section 5.01(b); or

(7) [Reserved].

Upon the request of the Parent, the Trustee shall take all necessary actions to effectuate any release of a Note Guarantee in accordance with these provisions, subject to customary protections and indemnifications. Each of the releases set forth above shall be effected by the Trustee without the consent of the Holders or any other action or consent on the part of the Trustee.

Section 10.07. Limitations on Obligations of Guarantors.

Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that can be hereby guaranteed by the applicable Guarantor without rendering the Note Guarantee, as it relates to such Guarantor, voidable under applicable laws relating to fraudulent conveyance, fraudulent transfer, improper corporate benefit, financial assistance or similar laws affecting the rights of creditors generally; *provided* that, with respect to each relevant jurisdiction, such obligations shall be limited in the manner described in any supplemental indenture.

Section 10.08. Local Law Limitations.

(a) Limitations on Liability of French Guarantors.

(1) In the case of any Guarantor incorporated under the laws of France (a "*French Guarantor*") its obligations under this Indenture shall apply only insofar as required to:

(A) guarantee the payment obligations under this Indenture and the Notes of its direct or indirect Subsidiaries which are or become Guarantors from time to time under this Indenture and incurred by those Subsidiaries in their capacity as Guarantor (without double counting) *provided* that where such Subsidiary itself guarantees the obligations of the Parent or any of its Restricted Subsidiaries which is not a direct or indirect Subsidiary of the relevant French Guarantor, the amounts payable under this Section 10.08(a)(1)(A) in respect of the obligations of this Subsidiary as a Guarantor, shall be limited as set out in Section 10.08(a)(1)(B) below; and

(B) guarantee the payment obligations of (i) the Issuer or (ii) other Guarantors which are not direct or indirect Subsidiaries of that French Guarantor, provided that in such cases such guarantee shall be limited: (x) to the payment obligations of (i) the Issuer under this Indenture and the Notes or (ii) such other Guarantors under this Indenture but in each case (y) not exceeding an amount equal to the aggregate of all amounts made available (directly or indirectly) to the Issuer or such other Guarantors under this Indenture and the Notes/and received out of the proceeds of the Notes and on-lent (directly or indirectly by way of intercompany loans) to that French Guarantor and outstanding at the time a call is made under its Guarantee (the "*French Maximum Guaranteed Amount*"); it being specified that any payment made by such French Guarantor under this Indenture in respect of the obligations of any Issuer or any other Guarantor shall reduce *pro tanto* the outstanding amount of the intercompany loans (if any) due by such French Guarantor under the relevant intercompany loan arrangements referred to above.

(2) For the avoidance of doubt, any payment made by a French Guarantor under Section 10.08(a)(1)(B) pursuant to the guarantees granted under this Indenture shall reduce *pro tanto* the French Maximum Guaranteed Amount.

(3) Notwithstanding any other provision of this Indenture, no French Guarantor shall secure liabilities under this Indenture and the Notes which would result in such French Guarantor not complying with French financial assistance rules as set out in Article L. 225-216 of the French Commercial Code (*Code de commerce*) or would constitute a misuse of corporate assets within

the meaning of article L. 241-3, L. 242-6 or L. 244-1 of the French Commercial Code (*Code de commerce*) or any other applicable law or regulations having the same effect, as interpreted by French courts.

(4) It is acknowledged that no French Guarantor is acting jointly and severally with the Issuer or other Guarantors as to its obligations arising under or in connection with this Indenture.

(5) Notwithstanding any other provision of this Indenture, (i) the representations, undertakings and warranties made in this Indenture by any French Guarantor (or by the Issuer) shall be made, in each case, in respect of itself and its Subsidiaries only and for the avoidance of any doubt will not apply in relation to matters pertaining exclusively to its shareholders or its holding companies; and (ii) the indemnities granted in this Indenture by each French Guarantor shall be, in each case, in respect of its own breach or that of (i) the Issuer (if the Issuer is a direct or indirect Subsidiary of that French Guarantor) or (ii) its Subsidiaries which are French Guarantors.

(b) Limitations on Liability of Spanish Guarantors. Any obligations or liabilities incurred or assumed under this Indenture by any Spanish Guarantor shall (i) not include any obligations or liabilities which, if incurred, would constitute a breach of the financial assistance limitations set out under Articles 143 and 150 of Spanish Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Spanish Capital Companies Act, as interpreted by Spanish courts, and (ii) with respect to Spanish Guarantors which are private limited liability companies (*sociedad limitada*), not exceed an amount equal to twice the amount of their respective own funds (*recursos propios*), but only to the extent that such limitation provided under Article 401.2 of the Spanish Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Spanish Capital Companies Act, as interpreted by Spanish courts, is compulsorily applicable to the obligations assumed by such Spanish Guarantors under this Indenture.

(c) Limitations on Liability of Norwegian Guarantors. Notwithstanding the other provisions of this Indenture, the obligations and liabilities of any Guarantor incorporated in Norway (each, a "*Norwegian Guarantor*") under this Indenture shall be deemed to have been given only to the extent such obligations and liabilities do not violate the mandatory provisions of the Norwegian Private Limited Companies Act of 13 June 1997 no. 44 (the "*Norwegian Companies Act*"), including Sections 8-7 and 8-10, regulating unlawful financial assistance and other prohibited loans, guarantees and joint and several liability as well as providing of security, and the liability of each Norwegian Guarantor shall only apply to the fullest extent permitted by such provisions of the Norwegian Companies Act. The liabilities of any Norwegian Guarantor is limited to the maximum principal amount of amount equaling $500 million of the aggregate principal amount of Notes issued pursuant to this Indenture, plus any unpaid amounts of interest, default interest, breaking costs, fees, commissions, costs, expenses and other derived liabilities under this Indenture. The limitations in this Section 10.08(c) shall apply *mutatis mutandis* to any Security Document to which a Norwegian Guarantor is party.

Section 10.09. Non-Impairment.

The failure to endorse a Note Guarantee on any Note shall not affect or impair the validity thereof.

ARTICLE XI

COLLATERAL AND SECURITY

Section 11.01. Security Documents.

(a) The due and punctual payment of the principal of, premium on, if any, interest and Additional Amounts, if any, on, the Notes and the Guarantees when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium on, if any, interest and Additional Amounts, if any (to the extent permitted by law), on the Notes, the Guarantees and performance of all other obligations of the Issuer and the Guarantors to the Holders or the Trustee and the Security Agent under this Indenture, the Notes and the Guarantees according to the

terms hereunder or thereunder, are secured as provided in the Intercreditor Agreement, the ABL Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents. Each Holder, by its acceptance of a Note: (i) consents and agrees to the terms of the Intercreditor Agreement, the ABL Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents (including, without limitation, the provisions providing for foreclosure and release of Liens and authorizing the Security Agent to enter into any Security Document on its behalf) as the same may be in effect or may be amended from time to time in accordance with its terms and (ii) authorizes and directs the Security Agent to enter into the Security Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuer will deliver to the Trustee copies of all documents delivered to the Security Agent pursuant to the Security Documents, and, subject to the Agreed Security Principles, the Issuer and the Guarantors will, and the Issuer will cause each of its Restricted Subsidiaries to, do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Security Documents, to assure and confirm to the Trustee that the Security Agent holds, for the benefit of the Trustee and the Holders, duly created, enforceable and perfected Liens as contemplated hereby and by the Security Documents, so as to render the same available for the security and benefit of this Indenture and of the Notes and the Guarantees secured thereby, according to the intent and purposes herein expressed. Subject to the Agreed Security Principles, the Intercreditor Agreement and the ABL Intercreditor Agreement, the Issuer and the Guarantors will take, upon request of the Trustee, any and all actions reasonably required to cause the Security Documents to create and maintain, as security for the obligations of the Issuer under the Notes, a valid and enforceable Lien (i) on the Collateral held by the ABL Guarantors in accordance with the relative priorities set forth in the ABL Intercreditor Agreement and the Intercreditor Agreement and (ii) on the Collateral held by the Guarantors other than the ABL Guarantors in accordance with the relative priorities set forth in the Intercreditor Agreement.

(b) Without prejudice to the provisions of the Intercreditor Agreement or the ABL Intercreditor Agreement, each of the Issuer, the Trustee and the Holders agree that the Security Agent shall be the joint creditor (together with the Holders) of each and every obligation of the parties hereto under the Notes and this Indenture, and that accordingly the Security Agent will have its own independent right to demand performance by the Issuer of those obligations, except that such demand shall only be made with the prior written consent of the Trustee or as otherwise permitted under the Intercreditor Agreement or the ABL Intercreditor Agreement. However, any discharge of such obligation to the Security Agent, on the one hand, or to the Trustee or the Holders, as applicable, on the other hand, shall, to the same extent, discharge the corresponding obligation owing to the other.

(c) Each Holder, by accepting a Note, shall be deemed (i) to have authorized the Security Agent to enter into the Security Documents, the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement entered into in compliance with Section 4.11 and (ii) to be bound thereby. Each Holder, by accepting a Note, appoints the Security Agent as its trustee under the Security Documents and authorizes it to act on such Holder's behalf. The Trustee hereby acknowledges that the Security Agent is authorized to act under the Security Documents on behalf of the Trustee, with the full authority and powers of the Trustee thereunder, in accordance with the Intercreditor Agreement and the ABL Intercreditor Agreement. The Security Agent is hereby authorized to exercise such rights, powers and discretions as are specifically delegated to it by the terms of the Security Documents, including the power to enter into the Security Documents, as trustee on behalf of the Holders and the Trustee, in accordance with the Intercreditor Agreement and the ABL Intercreditor Agreement, together with all rights, powers and discretions as are reasonably incidental thereto or necessary to give effect to the trusts created thereunder. The Security Agent shall however at all times be entitled to seek directions from the Trustee and shall be obligated to follow those directions if given (but the Trustee shall not be obligated to give such directions unless directed in accordance with this Indenture).

(d) Neither the Trustee nor the Security Agent nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any property securing the Notes, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Lien, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so.

Section 11.02. Release of Collateral.

Notwithstanding the Security Documents, upon receipt by the Security Agent of a certificate from the Issuer that complies with Section 11.05, and subject to the terms of the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement, the Security Agent is authorized to release the relevant Collateral.

Section 11.03. Authorization of Actions to Be Taken by the Trustee Under the Security Documents.

Subject to the provisions of Section 7.01 and Section 7.02 hereof and the terms of the Intercreditor Agreement, the ABL Intercreditor Agreement and the Security Documents, the Trustee may, in its sole discretion and without the consent of the Holders:

(A) direct, on behalf of the Holders, the Security Agent to take all actions it deems necessary or appropriate in order to:

(1) enforce any of the terms of the Security Documents or the Intercreditor Agreement; and

(2) collect and receive any and all amounts payable in respect of the obligations of the Issuer or any Guarantor hereunder; and

(B) take all actions it deems necessary or appropriate in order to collect and receive any and all amounts payable in respect of the obligations of the Issuer hereunder.

Subject to the provisions hereof, the Security Documents, the Intercreditor Agreement and the ABL Intercreditor Agreement, the Trustee will have power to institute and maintain, or direct the Security Agent to institute and maintain, such suits and proceedings as it may deem expedient to prevent any impairment of the Liens over the Collateral by any acts that may be unlawful or in violation of the Security Documents, the Intercreditor Agreement, the ABL Intercreditor Agreement or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair such Liens or be prejudicial to the interests of the Holders or of the Trustee).

Section 11.04. Authorization of Receipt of Funds by the Trustee Under the Security Documents

The Trustee and/or the Security Agent is authorized to receive any funds for the benefit of the Holders distributed under the Security Documents and to make further distributions of such funds to the Holders according to the provisions of this Indenture, the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement.

Section 11.05. Termination of Security Interest; Activity with Respect to Collateral.

(a) Subject to the terms of the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement, the Security Agent shall, at the written request of the Issuer, release the relevant Collateral or execute such other appropriate instrument evidencing such release (in the form provided by, reasonably acceptable to the Trustee, and at the expense of the Issuer) under one or more of the following circumstances:

(1) upon payment in full of principal, interest and all other obligations under the Notes and this Indenture or the legal defeasance, covenant defeasance or satisfaction and discharge of this Indenture as provided for in Article VIII;

(2) in the case of a Guarantor that is released from its Guarantee pursuant to the terms of this Indenture, the release of property and assets, and Capital Stock, of such Guarantor;

(3) in connection with any sale or other disposition of Collateral, directly or indirectly, to (a) any Person other than the Parent, the Issuer or any other Restricted Subsidiaries (but excluding any transaction subject to Article V) if such sale or other disposition does not violate Section 4.05 and is otherwise not prohibited by this Indenture or (b) the Issuer or any other Restricted Subsidiary in a manner consistent with the Intercreditor Agreement and the ABL Intercreditor Agreement, *provided* that, any Replacement Asset received as consideration for such sale or disposition of Collateral in accordance with this clause (3) or acquired with

the proceeds of such Collateral shall secure the Notes to the extent and so long as the provision of such Replacement Asset as Collateral is not reasonably expected to result in (i) any violation of any applicable law or regulation, (ii) any liability of officers, directors or shareholders, (iii) any cost, expense, liability or obligation (including with respect to taxes) other than reasonable out-of-pocket expenses incurred in connection with any governmental or regulatory filings or (iv) inconsistency with the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement;

(4) as provided for under Article IX;

(5) automatically without any action by the Trustee, as described in Section 4.03(b);

(6) as otherwise provided in the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement;

(7) in order to effectuate a merger, consolidation, conveyance or transfer conducted in compliance with Article V;

(8) with respect to assets held by or the Capital Stock of any Restricted Subsidiary, in connection with a solvent liquidation of such Restricted Subsidiary, pursuant to which substantially all of the assets of such Restricted Subsidiary remain owned by the Issuer or a Guarantor; *provided* that, immediately following such solvent liquidation, a Lien of at least equivalent ranking over the same assets exists or is granted in favor of the Security Agent (on its own behalf and on behalf of the Trustee for the Holders);

(9) if on any date following the Issue Date, the Notes have achieved Investment Grade Status and no Default or Event of Default has occurred and is continuing; and

(10) as otherwise permitted in accordance with this Indenture, including pursuant to Section 4.15.

The Security Agent and the Trustee (but only if required in order to effect such release) will, subject to customary protections and/or indemnifications, take all necessary action reasonably requested by, and at the cost of, the Issuer to effectuate any release of Collateral securing the Notes and the Notes Guarantees, in accordance with this Indenture, the Intercreditor Agreement, the ABL Intercreditor Agreement or any Additional Intercreditor Agreement and the relevant Security Document. Each of these releases set forth above shall be effected by the Security Agent and, to the extent required or necessary, the Trustee, without the consent of the holders of the Notes. The Security Agent and the Trustee shall be entitled to request and rely solely upon an Officer's Certificate and an Opinion of Counsel, each certifying which circumstances give rise to the release of Collateral and that such release complies with this Indenture.

Section 11.06. Security Agent.

(a) The Security Documents and the Collateral will be administered by the Security Agent, in each case pursuant to the Intercreditor Agreement and the ABL Intercreditor Agreement for the benefit of all holders of secured obligations.

(b) Any resignation or replacement of the Security Agent shall be made in accordance with the terms of the Intercreditor Agreement and the ABL Intercreditor Agreement.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Notices. Any notice or communication shall be in writing, in the English language, and delivered in person or mailed by first-class mail addressed as follows:

if to the Parent or Issuer:

Ferroglobe PLC
5 Fleet Place,

London EC4M 7RD,
United Kingdom
Attention: Thomas Wiesner

with copy to:

Milbank LLP
10 Gresham Street
London EC2V 7JD
United Kingdom
Attention: Tim Peterson

if to the Trustee

GLAS Trustees Limited
45 Ludgate Hill
London EC4M 7JU
United Kingdom
Email: TES@GLAS.AGENCY
Attention: Trustee & Escrow Services

if to the Paying Agent
Global Loan Agency Services Limited
45 Ludgate Hill
London EC4M 7JU
United Kingdom
Email : tes@glas.agency
Attention: Ferroglobe

if to the Registrar and Transfer Agent
GLAS Americas LLC
230 Park Avenue, 10th Floor
New York, New York 10169
United States of America
Telephone: +1 212 808 3050
Facsimile: +1 212 202 6246
Attention: Transaction Management
Email: Client Services Americas clientservices.americas@glas.agency

if to the Security Agent
GLAS Trust Corporation Limited
45 Ludgate Hill
London EC4M 7JU
United Kingdom
Email: TES@GLAS.AGENCY
Attention: Trustee & Escrow Services

The Issuer or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication sent to a Holder of Definitive Registered Notes shall be in writing and shall be made by first-class mail, postage prepaid, or by hand delivery to the Holder at the Holder's address as it appears on the registration books of the Registrar, with a copy to the Trustee.

For so long as any of the Notes are listed on the Global Exchange Market of Euronext Dublin and the rules thereof so require, notices of the Issuer with respect to the Notes will be published in a daily newspaper with general circulation in Ireland (which is expected to be *The Irish Times*) or if, in the opinion of the Issuer such publication is not practicable, in an English language newspaper having general circulation in Europe. Notices may also be published on the website of Euronext Dublin (*www.euronext.com/en/markets/dublin*) in lieu of publication in a daily newspaper so long as the rules of such exchange are complied with.

If and so long as any Notes are represented by one or more Global Notes and ownership of book-entry interests therein are shown on the records of Euroclear or Clearstream or any successor securities clearing agency appointed at the request of the Issuer, notices will be delivered in accordance with the applicable procedures of Euroclear or Clearstream or such successor clearing agency to such securities clearing agency for communication to the owners of such book-entry interests and such notices shall be deemed to have been given on the date delivered to such securities clearing agency.

Notices given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing. Notices given by publication will be deemed to have been given on the date of such publication or, if published more than once on different dates, on the first date on which publication is made; *provided* that, if notices are mailed, such notice shall be deemed to have been given on the later of such publication and the seventh day after being so mailed. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to such Holder if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Any notices provided by the Issuer to the Trustee or to an Agent shall be in the English language or a certified translation.

Section 12.02. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee:

(i) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.03 hereof) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and any other matters that the Trustee may reasonably request; and

(ii) if requested by the Trustee, an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent have been complied with and any other matters that the Trustee may reasonably request.

Section 12.03. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(i) a statement that the Person making such certificate or opinion has read such covenant or condition;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such Person, such Person has made such examination or investigation as is necessary to enable that Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether or not, in the opinion of such Person, such covenant or condition has been complied with.

Section 12.04. When Notes are to be Disregarded. In determining whether the Holders of the required principal amount of the Notes have concurred in any direction, waiver or consent, the Notes owned by the Issuer or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer will be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes so owned about which a Responsible Officer of the Trustee has been notified in accordance with this Indenture shall be so disregarded. Subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

Section 12.05. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

Section 12.06. Legal Holidays. If a payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day and no interest shall accrue for the intervening period. If a regular record date is not a Business Day, the record date shall not be affected.

Section 12.07. Governing Law. THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES, AND THE RIGHTS AND DUTIES OF THE PARTIES THEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 12.08. Consent to Jurisdiction and Service. Each of the parties hereto irrevocably agrees that any suit, action or proceeding arising out of, related to, or in connection with this Indenture, the Notes and the Note Guarantees or the transactions contemplated hereby, and any action arising under U.S. Federal or state securities laws, may be instituted in any U.S. federal or state court located in the State and City of New York, Borough of Manhattan; irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such proceeding; and irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding. The Parent and each of the Guarantors hereby appoint Globe Specialty Metals, Inc. as its authorized agent (the "*Authorized Agent*") upon whom process may be served in any such suit, action or proceeding which may be instituted in any Federal or state court located in the State of New York, Borough of Manhattan arising out of or based upon this Indenture, the Notes or the transactions contemplated hereby or thereby, and any action brought under U.S. Federal or state securities laws. The Issuer and each of the Guarantors expressly consents to the jurisdiction of any such court in respect of any such action and waives any other requirements of or objections to personal jurisdiction with respect thereto and waives any right to trial by jury. Such appointment shall be irrevocable unless and until replaced by an agent reasonably acceptable to the Trustee. The Issuer and each of the Guarantors represents and warrants that the Authorized Agent has agreed to act as said agent for service of process, and the Issuer agrees to take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue such appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent and written notice of such service to the Parent shall be deemed, in every respect, effective service of process upon the Issuer and any Guarantor.

Section 12.09. No Recourse Against Others. No director, officer, employee, incorporator or shareholder of the Parent or any of their respective Subsidiaries or Affiliates as such, shall have any liability for any obligations of the Issuer or any Guarantor under this Indenture or any Notes Documents, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 12.10. Successors. All agreements of the Issuer and each Guarantor in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 12.11. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

Section 12.12. Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 12.13. Prescription. Claims against the Issuer and the Guarantors for the payment of principal, or premium, if any, on the Notes will be prescribed 10 years after the applicable due date for payment thereof. Claims against the Issuer and the Guarantors for the payment of interest on the Notes will be prescribed five years after the applicable due date for payment of interest.

Section 12.14. Severability.

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

FERROGLOBE FINANCE COMPANY, PLC,
as Issuer

By: /s/ Marco Levi
Name: Marco Levi
Title: Director

[*Signature Page to Indenture*]

Ferroglobe PLC,
as Parent

By: /s/ Javier Lopez Madrid
Name: Javier Lopez Madrid
Title: Executive Chairman

[*Signature Page to Indenture*]

Ferroglobe Holding Company Ltd.,
as Guarantor

By: /s/ Beatriz Garcia-Cos Muntanola
Name: Beatriz Garcia-Cos Muntanola
Title: Director

[*Signature Page to Indenture*]

Grupo FerroAtlántica S.A.U.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Ferroatlantica Participaciones S.L.U.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Ferrosolar OPCO Group S.L.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Grupo Ferroatlantica De Servicios S.L.U.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Ferroatlantica De Boo S.L.U.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Ferroatlantica De Sabon S.L.U.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Ferroatlantica del Cinca S.L.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Cuarzos Industriales S.A.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

GSM Netherlands B.V.,
(having its corporate seat in Amsterdam, the Netherlands and registered with the Dutch trade register under number 34358567)
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Ferroglobe Mangan Norge AS,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

FerroPem, S.A.S.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Ferroglobe Manganese France S.A.S.,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Globe Metallurgical, Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Alden Resources LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

ARL Resources, LLC,
as Guarantor

By: Alden Resources LLC,
as sole member

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

ARL Services, LLC,

By: Alden Resources LLC,
as sole member

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Alden Sales Corp, LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Core Metals Group Holdings LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Core Metals Group LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Metallurgical Process Materials, LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Tennessee Alloys Company, LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Alabama Sand and Gravel, Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GSM Sales, Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Gatliff Services, LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GSM Enterprises Holdings Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GSM Enterprises LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GBG Holdings LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Globe Metals Enterprises LLC,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GSM Alloys II Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GSM Alloys I Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Solsil Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GSM Financial Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

Norchem, Inc.,
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

QSIP Canada ULC,
as Guarantor

By: /s/ Thomas Wiesner
Name: Thomas Wiesner
Title: Attorney

[*Signature Page to Indenture*]

Globe Specialty Metals, Inc.
as Guarantor

By: /s/ Paul Lojek
Name: Paul Lojek
Title: President

[*Signature Page to Indenture*]

GLAS Trustees Limited,
as Trustee

By: /s/ Paul Cattermole
Name: Paul Cattermole
Title: Authorised Signatory

[*Signature Page to Indenture*]

Global Loan Agency Services Limited,
as Paying Agent

By: /s/ Paul Cattermole
Name: Paul Cattermole
Title: Authorised Signatory

[*Signature Page to Indenture*]

GLAS Americas LLC,
as Registrar and Transfer Agent

By: /s/ Martin Reed
Name: Martin Reed
Title: Senior Vice President

[*Signature Page to Indenture*]

GLAS Trust Corporation Limited,
as Security Agent

By: /s/ Paul Cattermole
Name: Paul Cattermole
Title: Authorised Signatory

[*Signature Page to Indenture*]

EXHIBIT A

PROVISIONS RELATING
TO THE NOTES

These provisions relating to the Notes are in addition to and not in lieu of the provisions relating to the Notes found in Articles II and III of the Indenture. In the event any inconsistency between the language in this Exhibit A and corresponding language in the Indenture, the language in the Indenture shall control.

1. Definitions.

Capitalized terms used but not otherwise defined in this Exhibit A shall have the meanings assigned to them in the Indenture. For the purposes of this Exhibit A the following terms shall have the meanings indicated below:

"*Definitive Registered Note*" means a certificated Note that does not include the Global Notes Legend.

"*Common Depositary*" means Banque Internationale à Luxembourg, société anonyme, for Euroclear and Clearstream accounts, or any successor Person thereto.

"*Global Notes*" has the meaning given to it in Section 2.1(a)(iv) of this Exhibit A.

"*Global Notes Legend*" means the legend set forth under that caption in Exhibit A-1.

"*Institutional Accredited Investors*" means an "accredited investor" as defined in Rule 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) of Regulation D.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Regulation D*" means Regulation D under the Securities Act.

"*Regulation S*" means Regulation S under the Securities Act.

"*Regulation S Global Notes*" has the meaning given to it in Section 2.1(a)(ii) of this Exhibit A.

"*Regulation S Notes*" means all Notes offered and sold outside the United States in reliance on Regulation S.

"*Restricted Global Notes*" has the meaning given to it in Section 2.1(a)(i) of this Exhibit A.

"*Restricted Notes Legend*" means the legend set forth under that caption in this Exhibit A-1.

"*Rule 144A*" means Rule 144A under the Securities Act.

"*Rule 144A Notes*" means all Notes offered and sold to QIBs in reliance on Rule 144A.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"*Transfer Restricted Notes*" means Definitive Registered Notes and any other Notes that bear or are required to bear the Restricted Notes Legend.

"*United States*" and "U.S." means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

2. The Notes.

2.1 Form and Dating.

(a) Global Notes.

(i) Notes offered and sold within the United States to QIBs in accordance with Rule 144A shall be issued initially in the form of one or more permanent global notes in fully registered form without interest coupons (collectively, the "*144A Global Notes*"). Notes offered and sold within the United States to Institutional Accredited Investors in reliance on Regulation D shall be issued initially in the form of one or more permanent global notes in fully registered form without interest coupons (collectively, the "*IAI Global Notes*" and, collectively with the 144A Global Notes, the "*Restricted Global Notes*").

(ii) Notes offered and sold outside the United States in reliance on Regulation S and denominated in U.S. dollars shall be issued initially in the form of one or more permanent global notes in fully registered form without interest coupons (collectively, the "*Regulation S Global Notes*").

(iii) The Restricted Global Notes and the Regulation S Global Notes shall bear the Global Notes Legend. The Restricted Global Notes shall bear the Restricted Notes Legend. The Restricted Global Notes and the Regulation S Global Notes shall be deposited on behalf of the purchasers of the Notes represented thereby with the Common Depositary, and registered in the name of the Common Depositary or its nominee, as the case may be, for the accounts of Euroclear and Clearstream, duly executed by the Issuer and authenticated by the Trustee or the Authenticating Agent as provided in the Indenture.

(iv) The Restricted Global Notes and the Regulation S Global Notes are each referred to herein as a "*Global Note*" and are collectively referred to herein as "*Global Notes*". The aggregate principal amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee or Registrar and the Common Depositary or its nominee and on the schedules thereto as hereinafter provided, in connection with transfers, exchanges, redemptions and repurchases of beneficial interests therein.

(b) Book-Entry Provisions. This Section 2.1(b) shall apply only to a Global Note deposited with or on behalf of the Common Depositary.

Members of, or participants and account holders in, Euroclear and Clearstream ("*Participants*") shall have no rights under the Indenture with respect to any Global Note held on their behalf by the Common Depositary or its nominee or by the Trustee, and the Common Depositary or its nominee may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Common Depositary or impair, as between the Common Depositary, on the one hand, and the Participants, on the other, the operation of customary practices of such persons governing the exercise of the rights of a Holder of a beneficial interest in any Global Note.

The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action that a Holder is entitled to take under this Indenture or the Notes.

(c) Definitive Registered Notes. Except as provided in Section 2.3 or 2.4 of this Exhibit A, owners of beneficial interests in Global Notes will not be entitled to receive physical delivery of certificated Notes.

2.2 Authentication. The Trustee or the Authenticating Agent, as the case may be, shall authenticate and make available for delivery the Notes upon a written Authentication Order of the Issuer signed by an Officer of the Issuer. Such Authentication Order shall (a) specify the amount of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated, (b) direct the Trustee or the Authenticating Agent to authenticate such Notes and (c) certify that all conditions precedent to the issuance of such Notes have been complied with in accordance with the terms hereof.

2.3 Transfer and Exchange.

(a) Transfer and Exchange of Definitive Registered Notes. When Definitive Registered Notes are presented to the Registrar or Transfer Agent, as the case may be, with a request:

(i) to register the transfer of such Definitive Registered Notes; or

(ii) to exchange such Definitive Registered Notes for an equal principal amount of Definitive Registered Notes of other authorized denominations,

the Registrar or the Transfer Agent, as the case may be, shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met, *provided, however,* that the Definitive Registered Notes surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Issuer and the Registrar or the Transfer Agent, as the case may be, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(2) in the case of Transfer Restricted Notes, are accompanied by the following additional information and documents, as applicable:

(i) if such Definitive Registered Notes are being delivered to the Registrar or the Transfer Agent, as the case may be, by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect (in the form set forth on the reverse side of the Note);

(ii) if such Definitive Registered Notes are being transferred to the Issuer, a certification to that effect (in the form set forth on the reverse side of the Note); or

(iii) if such Definitive Registered Notes are being transferred pursuant to an exemption from registration in accordance with Rule 144A, Regulation S, Regulation D or Rule 144 under the Securities Act or in reliance upon another exemption from the registration requirements of the Securities Act, (x) a certification to that effect (in the form set forth on the reverse side of the Note) and (y) if the Issuer or Registrar or Transfer Agent, as the case may be, so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in Section 2.3(d) of this Exhibit A.

(b) Restrictions on Transfer of a Definitive Registered Note for a Beneficial Interest in a Global Note. A Definitive Registered Note may not be exchanged for a beneficial interest in a Global Note except upon satisfaction of the requirements set forth below. Upon receipt by the Registrar of a Definitive Registered Note, duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Issuer, the Registrar and the Transfer Agent, together with:

(i) certification (in the form set forth on the reverse side of the Note) that such Definitive Registered Note is being transferred to a QIB in accordance with Rule 144A or an Institutional Accredited Investor in accordance with Regulation D; and

(ii) written instructions directing the Registrar to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Note to reflect an increase in the aggregate principal amount of the Notes represented by the Global Note, such instructions to contain information regarding the account to be credited with such increase, then the Trustee or the Authenticating Agent shall cancel such Definitive Registered Note and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Common Depositary and the Registrar, the aggregate principal amount of Notes represented by the Global Note to be increased by the aggregate principal amount of the Definitive Registered Note to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Note equal to the principal amount of the Definitive Registered Note so cancelled. If no Global Notes are then outstanding and the Global Note has not been previously exchanged for certificated securities pursuant to Section 2.4 of this Exhibit A, the Issuer shall issue and the Trustee or the Authenticating Agent shall authenticate, upon written order of the Issuer in the form of an Authentication Order, a new Global Note in the appropriate principal amount.

(c) Transfer and Exchange of Global Notes.

(i) The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Common Depositary, in accordance with the Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Common Depositary therefor. A transferor of a beneficial interest in a Global Note shall deliver a written order given in accordance with the Common Depositary's procedures containing information regarding the participant account of the Common Depositary to be credited with a beneficial interest in such Global Note or another Global Note and such account shall be credited in accordance with such order with a beneficial interest in the applicable Global Note and the account of the Person making the transfer shall be debited by an amount equal to the beneficial interest in the Global Note being transferred. Transfers and exchanges of book-entry interests in a Global Note to Persons who take delivery thereof in the form of a book-entry interest in a Global Note shall be made in accordance with the transfer restrictions set forth in the Global Notes Legend. Transfers by an owner of a beneficial interest in a Restricted Global Note to a transferee who takes delivery of such interest through a Regulation S Global Note shall be made only upon receipt by the Registrar of a certification in the form provided in Exhibit B from the transferor to the effect that such transfer is being made in accordance with Regulation S or pursuant to an exemption from registration under the Securities Act provided by Rule 144 (if applicable) under the Securities Act.

(ii) Notwithstanding any other provisions of this Exhibit A (other than the provisions set forth in Section 2.4 of this Exhibit A), a Global Note may not be transferred as a whole except by the Common Depositary to a successor Common Depositary or a nominee of such successor Common Depositary.

(d) Legend.

(i) Except as permitted by the following paragraph (ii) or (iii), each Note certificate evidencing the Restricted Global Notes or any Definitive Registered Notes held by QIBs in accordance with Rule 144A or Institutional Accredited Investors in accordance with Regulation D (and all Notes issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

"THIS NOTE HAS NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT") OR THE SECURIITES LAWS OF ANY STATE OF THE UNITED STATES OR OTHER JURISDICTION AND, NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF WITHIN THE UNITED STATES IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, NOR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER FOR THE BENEFIT OF THE ISSUER AND THE GUARANTORS AND ANY OF THEIR SUCCESSORS IN INTEREST:

(1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE U.S. SECURITIES ACT) (A "QIB"), (B) IT HAS ACQUIRED THIS SECURITY IN AN OFFSHORE TRANSACTION COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT OR (C) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) OF REGULATION D UNDER THE SECURITIES ACT) (AN "IAI");

(2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES THAT IT WILL NOT PRIOR TO THE DATE WHICH IS ONE YEAR (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE U.S. SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE DATE OF ORIGINAL ISSUE AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THE NOTES (OR ANY PREDECESSOR THERETO) (THE "RESALE RESTRICTION TERMINATION DATE") RESELL, PLEDGE OR OTHERWISE TRANSFER THIS NOTE OR A BENEFICIAL INTEREST IN THIS NOTE EXCEPT (A) TO THE ISSUER, THE GUARANTORS OR ANY SUBSIDIARY THEREOF, (B) TO A PERSON THAT THE SELLER, AND ANY PERSON ACTING ON ITS BEHALF, REASONABLY BELIEVES IS A QIB PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QIB IN A TRANSACTION COMPLYING WITH RULE 144A UNDER THE U.S. SECURITIES ACT, (C) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE U.S. SECURITIES ACT, (D) TO AN IAI THAT IS ACQUIRING THE NOTE FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN IAI, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT, AND IN EACH OF SUCH CASES IN COMPLIANCE WITH ANY APPLICABLE SECURITIES LAW OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION; PROVIDED THAT THE ISSUER, THE TRUSTEE AND THE REGISTRAR SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (C), (D) OR (E) PRIOR TO THE RESALE RESTRICTION TERMINATION DATE TO REQUIRE THAT AN OPINION OF COUNSEL, CERTIFICATIONS OR OTHER INFORMATION SATISFACTORY TO THE ISSUER, THE TRUSTEE AND THE REGISTRAR IS COMPLETED AND DELIVERED BY THE TRANSFEROR; AND

(3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED, A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE ISSUER AFTER THE RESALE RESTRICTION TERMINATION DATE. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION", AND "UNITED STATES" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE U.S. SECURITIES ACT.

BY ACCEPTANCE AND HOLDING OF THIS NOTE, EACH ACQUIRER AND SUBSEQUENT TRANSFEREE OF THIS NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (A) NO PORTION OF THE ASSETS USED BY SUCH ACQUIRER OR TRANSFEREE TO ACQUIRE OR HOLD THIS NOTE OR ANY INTEREST HEREIN CONSTITUTES ASSETS OF ANY (I) EMPLOYEE BENEFIT PLAN SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), (II) PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR PROVISIONS UNDER ANY U.S. OR NON-U.S. FEDERAL, STATE, LOCAL OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR (III) ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT DESCRIBED IN CLAUSE (I) AND (II) (EACH OF THE FOREGOING DESCRIBED IN CLAUSES (I), (II) AND (III) REFERRED TO AS A "PLAN") OR (B) THE ACQUISITION, HOLDING AND SUBSEQUENT DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR ANY SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS."

Each Definitive Registered Note held by QIBs in accordance with Rule 144A or Institutional Accredited Investors in accordance with Section 4(a)(2) of the Securities Act shall bear the following additional legend:

"IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS THE ISSUER MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS".

(ii) Upon any sale or transfer of a Transfer Restricted Note that is a Definitive Registered Note, the Holder thereof shall be permitted to exchange such Transfer Restricted Note for a Definitive Registered Note that does not bear the legends set forth above and rescind any restriction on the transfer of such Transfer Restricted Note if the Holder certifies in writing to the Transfer Agent and Registrar that its request for such exchange was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Note).

(iii) Any additional Notes sold in a registered offering under the Securities Act shall not be required to bear the Restricted Notes Legend.

(e) Cancellation or Adjustment of Global Note. At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Registered Notes, transferred, redeemed, repurchased or cancelled, such Global Note shall be returned by the Common Depositary to Trustee or the Authenticating Agent for cancellation or retained and cancelled by the Trustee or the Authenticating Agent. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Definitive Registered Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or cancelled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the books and records of the Registrar with respect to such Global Note, by the Trustee or the Registrar, to reflect such reduction.

(f) Obligations with Respect to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee or an Authenticating Agent shall authenticate, Definitive Registered Notes and Global Notes at the Registrar's request.

(ii) No service charge shall be made for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchange or transfer pursuant to Section 2.07, 3.06, 4.05, 4.14 or 9.04 of the Indenture).

(iii) Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, the Paying Agent or the Registrar may deem and treat the person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Notes issued upon any transfer or exchange pursuant to the terms of the Indenture shall evidence the same debt and shall be entitled to the same benefits under the Indenture as the Notes surrendered upon such transfer or exchange.

(g) No Obligation of the Trustee.

(i) The Trustee and Agents shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in the Common Depositary or any other Person with respect to the accuracy of the records of the Common Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Common Depositary) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to the registered Holders (which shall be the Common Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Common Depositary subject to the applicable rules and procedures of the

Common Depositary. The Trustee and Agents may rely and shall be fully protected in relying upon information furnished by the Common Depositary with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance, and shall not be responsible or liable for compliance, with any restrictions on transfer, exchange, redemption, purchase or repurchase, as applicable, imposed under the Indenture or under applicable law or regulation with respect to any transfer, exchange, redemption, purchase or repurchase, as applicable of any interest in any Note (including, without limitation, any transfers between or among Common Depositary participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof, it being understood that without limiting the generality of the foregoing, the Trustee shall not have any obligation or duty to monitor, determine or inquire as to compliance, and shall not be responsible or liable for compliance, with restrictions on transfer, exchange, redemption, purchase or repurchase, as applicable, of minimum denominations imposed under the Indenture or under applicable law or regulation with respect to any transfer, exchange, redemption, purchase or repurchase, as applicable, of any interest in any Note.

2.4 Transfer and Exchange of Global Notes for Definitive Registered Notes.

(a) A Global Note deposited with the Common Depositary or with the Registrar pursuant to Section 2.1 of this Exhibit A shall be transferred to the beneficial owners thereof in the form of Definitive Registered Notes in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, only if such transfer complies with Section 2.3 of this Exhibit A and (i) the Common Depositary notifies the Issuer that it is unwilling or unable to continue as a Common Depositary for such Global Note and a successor Common Depositary is not appointed by the Issuer within 120 days of such notice or after the Issuer become aware of such cessation, or (ii) if the owner of a book-entry interest in such Global Note requests such exchange in writing delivered through the Common Depositary following an Event of Default and enforcement action is being taken in respect thereof under the Indenture.

(b) Any Global Note that is transferable to the beneficial owners thereof pursuant to this Section 2.4 shall be surrendered by the Common Depositary to the Trustee or the Registrar, to be so transferred, in whole or from time to time in part, without charge, and the Trustee or an Authenticating Agent shall authenticate and deliver, upon such transfer of each portion of such Global Note, an equal aggregate principal amount of Definitive Registered Notes of authorized denominations. Any portion of a Global Note transferred pursuant to this Section 2.4 shall be executed, authenticated and delivered only in minimum denominations of $1.00 and multiples of $1.00 in excess thereof and registered in such names as the Common Depositary shall direct. Any certificated Note in the form of a Definitive Registered Note delivered in exchange for an interest in the Global Note shall, to the extent required by Section 2.3(d) of this Exhibit A, bear the Restricted Notes Legend.

(c) Subject to the provisions of Section 2.4(d) of this Exhibit A, the registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under the Indenture or the Notes.

(d) In the event of the occurrence of any of the events specified in Section 2.4(a)(i) or (ii) of this Exhibit A, the Issuer will promptly make available to the Trustee a reasonable supply of Definitive Registered Notes in fully registered form without interest coupons.

EXHIBIT A-1

[FORM OF FACE OF NOTE]

9.0% SENIOR SECURED NOTE DUE 2025

[Global Notes Legend:]

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS NOTE IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

THIS GLOBAL NOTE AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON AND PROCEDURES FOR RESALES AND OTHER TRANSFERS OF THIS GLOBAL NOTE TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS GLOBAL NOTE SHALL BE DEEMED, BY THE ACCEPTANCE HEREOF, TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.

[Restricted Global Notes Legend:]

THIS NOTE HAS NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT") OR THE SECURIITES LAWS OF ANY STATE OF THE UNITED STATES OR OTHER JURISDICTION AND, NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF WITHIN THE UNITED STATES IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, NOR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT.

BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER FOR THE BENEFIT OF THE ISSUER AND THE GUARANTORS AND ANY OF THEIR SUCCESSORS IN INTEREST:

(1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE U.S. SECURITIES ACT) (A "QIB"), (B) IT HAS ACQUIRED THIS SECURITY IN AN OFFSHORE TRANSACTION COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT OR (C) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) OF REGULATION D UNDER THE SECURITIES ACT) (AN "IAI");

(2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES THAT IT WILL NOT PRIOR TO THE DATE WHICH IS ONE YEAR (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE U.S. SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE DATE OF ORIGINAL ISSUE AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THE NOTES (OR ANY PREDECESSOR THERETO) (THE "RESALE RESTRICTION TERMINATION DATE") RESELL, PLEDGE OR OTHERWISE TRANSFER THIS NOTE OR A BENEFICIAL INTEREST IN THIS NOTE EXCEPT i. TO THE ISSUER, THE GUARANTORS OR ANY SUBSIDIARY THEREOF, ii. TO A PERSON THAT THE SELLER, AND ANY PERSON ACTING ON ITS BEHALF, REASONABLY BELIEVES IS A QIB PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QIB IN A TRANSACTION COMPLYING WITH RULE

144A UNDER THE U.S. SECURITIES ACT, iii. PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE U.S. SECURITIES ACT, iv. TO AN IAI THAT IS ACQUIRING THE NOTE FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN IAI, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, v. PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OR vi. PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT, AND IN EACH OF SUCH CASES IN COMPLIANCE WITH ANY APPLICABLE SECURITIES LAW OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION; PROVIDED THAT THE ISSUER, THE TRUSTEE AND THE REGISTRAR SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (C), (D) OR (E) PRIOR TO THE RESALE RESTRICTION TERMINATION DATE TO REQUIRE THAT AN OPINION OF COUNSEL, CERTIFICATIONS OR OTHER INFORMATION SATISFACTORY TO THE ISSUER, THE TRUSTEE AND THE REGISTRAR IS COMPLETED AND DELIVERED BY THE TRANSFEROR; AND

(3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED, A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE ISSUER AFTER THE RESALE RESTRICTION TERMINATION DATE. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION", AND "UNITED STATES" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE U.S. SECURITIES ACT.

BY ACCEPTANCE AND HOLDING OF THIS NOTE, EACH ACQUIRER AND SUBSEQUENT TRANSFEREE OF THIS NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (A) NO PORTION OF THE ASSETS USED BY SUCH ACQUIRER OR TRANSFEREE TO ACQUIRE OR HOLD THIS NOTE OR ANY INTEREST HEREIN CONSTITUTES ASSETS OF ANY (I) EMPLOYEE BENEFIT PLAN SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), (II) PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR PROVISIONS UNDER ANY U.S. OR NON-U.S. FEDERAL, STATE, LOCAL OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR (III) ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT DESCRIBED IN CLAUSE (I) AND (II) (EACH OF THE FOREGOING DESCRIBED IN CLAUSES (I), (II) AND (III) REFERRED TO AS A "PLAN") OR (B) THE ACQUISITION, HOLDING AND SUBSEQUENT DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR ANY SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS."

[Each Definitive Registered Note shall bear the following additional legend:]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS THE ISSUER MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

[Rule 144A / IAI / Regulation S]

Common Code _____

ISIN _____

Issue Date: _____

9.0% Senior Secured Note due 2025

No. _____ $ _____

FERROGLOBE FINANCE COMPANY PLC

a public limited company incorporated under the laws of England and Wales, having its registered office at 5 Fleet Place, London, England EC4M 7RD, United Kingdom, promises to pay [•], or its registered assigns, the principal sum of $_____, subject to adjustments listed on the Schedule of Increases or Decreases in the Global Note attached hereto, on June 30, 2025.

Interest Payment Dates: January 31 and July 31, commencing on January 31, 2022.

Record Dates: [One Business Day immediately preceding the relevant Interest Payment Date][*for Global Notes*]/[January 30 and July 30 immediately preceding the relevant Interest Payment Date][*for Definitive Registered Notes*]

This Note and the Note Guarantees in respect thereof are also subject to the transfer restrictions set forth on the other side of this Note.

The maximum principal amount of the Notes may be increased in accordance with the provisions set forth under the Indenture.

Additional provisions of this Note are set forth on the other side of this Note.

(Signature page to follow.)

IN WITNESS WHEREOF, Ferroglobe Finance Company, PLC has caused this Note to be signed manually or by facsimile by its duly authorized officers.

Dated:

FERROGLOBE FINANCE COMPANY PLC

By: _____

Name:

Title:

Dated: _____

Trustee's Certificate of Authentication

This is one of the 9.0% Senior Secured Notes due 2025 described in the within-mentioned Indenture.

GLAS Trustees Limited,
as Trustee

By:
Authorized Signatory

9.0% SENIOR SECURED NOTE DUE 2025

1. Interest.

Ferroglobe Finance Company, PLC, a public limited company incorporated under the laws of England and Wales (such company, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "*Issuer*") promises to pay interest on the principal amount of this Note at the rate of 9.0% per annum. The Issuer shall pay interest on this Note semi-annually in arrears on January 31 and July 31, commencing on January 31, 2022. The Issuer will make each interest payment to Holders of record of the Notes one Business Day immediately preceding the relevant Interest Payment Date. Interest on the Notes shall accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from the Issue Date until the principal hereof is due. Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at a rate that is 2.0% higher than the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) and Additional Amounts, if any, on overdue installments of interest, if any (without regard to any applicable grace period), at the same rate to the extent lawful.

2. Method of Payment.

The Issuer shall pay interest on this Note (except defaulted interest) to the persons who are registered Holders of this Note at the close of business on the Record Date for the next Interest Payment Date even if this Note is cancelled after the Record Date and on or before the Interest Payment Date. The Issuer shall pay principal and interest in euros in immediately available funds that at the time of payment is legal tender for payment of public and private debts; *provided*, that payment of interest may be made at the option of the Issuer by check mailed to the Holder.

The amount of payments in respect of interest on each Interest Payment Date shall correspond to the aggregate principal amount of Notes represented by the Regulation S Global Note and the Restricted Global Note, as established by the Registrar at the close of business on the relevant Record Date. Payments of principal shall be made upon surrender of the Regulation S Global Note and the Restricted Global Note to the Paying Agent.

3. Paying Agent and Registrar.

Initially, Global Loan Agency Services Limited will act as Paying Agent and GLAS Americas LLC will act as Registrar and Transfer Agent. The Issuer may appoint and change any Registrar, Transfer Agent or Paying Agent. The Issuer or any other Restricted Subsidiaries may act as Registrar, Transfer Agent and Paying Agent.

4. Indenture.

The Issuer issued the Notes under the Indenture dated as of May 17, 2021 (the "*Indenture*"), among the Issuer, the Parent, the Guarantors, GLAS Trustees Limited, as trustee (in such capacity, the "*Trustee*"), Global Loan Agency Services Limited, as paying agent, and GLAS Americas LLC, as registrar and transfer agent. The terms of the Notes include those stated in the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all terms and provisions of the Indenture, and Holders are referred to the Indenture for a statement of such terms and provisions. In the event of a conflict, the terms of the Indenture control.

The Notes are general, senior obligations of the Issuer. This Note is one of the Notes referred to in the Indenture. The Notes and, if issued, any Additional Notes are treated as a single class for all purposes under the Indenture, including, without limitation, with respect to waivers, amendments, redemptions and offers to purchase, except as otherwise provided for therein.

5. Optional Redemption.

(a) Except as provided in this Section 5, the Notes are not redeemable until the Transaction Effective Date.

(b) On and after the Transaction Effective Date, the Issuer may redeem all or, from time to time, part of the Notes upon not less than 10 nor more than 60 days' notice to the Holder, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest and Additional Amounts (as defined below), if any, to, but not including, the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the periods indicated below:

Period	**Redemption Price**
Period commencing on the Transaction Effective Date to the date falling 15 months after the Transaction Effective Date	100.000%
Period commencing after the date falling 15 months after the Transaction Effective Date to the date falling 9 months after such date	100.000% plus Applicable Premium
Period commencing after the date falling 24 months after the Transaction Effective Date to the date falling 36 months after the Transaction Effective Date	104.500%
Period commencing after the date falling 36 months after the Transaction Effective Date and thereafter	100.000%

Any such redemption and notice may, in the Issuer's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice shall state that, in the Issuer's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date so delayed; *provided* that in no case shall the notice have been delivered less than 10 days or more than 60 days prior to the date on which such redemption (if any) occurs. In addition, the Issuer may provide in such notice that payment of the redemption price and performance of the Issuer's obligations with respect to such redemption may be performed by another Person.

(c) Prior to the date falling 24 months from the Transaction Effective Date, the Issuer may on any one or more occasions redeem up to 35% of the aggregate principal amount of the Notes (including the principal amount of any Additional Notes), upon not less than 10 nor more than 60 days' notice, with funds in an aggregate amount (the "*Redemption Amount*") not exceeding the Net Cash Proceeds of one or more Equity Offerings at a redemption price of 109.000% of the principal amount of the Notes, plus accrued and unpaid interest and Additional Amounts, if any, to, but not including, the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided* that:

(1) at least 65% of the original principal amount of the Notes (including the principal amount of any Additional Notes) remains outstanding immediately after each such redemption; and

(2) the redemption occurs within 120 days after the closing of such Equity Offering.

(d) Prior to the date falling 24 months from the Transaction Effective Date, the Issuer may redeem all or, from time to time, a part of the Notes upon not less than 10 nor more than 60 days' notice at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium and accrued and unpaid interest and Additional Amounts, if any, to, but not including, the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest

payment date). Any such redemption and notice may, at the Issuer's discretion, be subject to the satisfaction of one or more conditions precedent.

"*Applicable Premium*" means with respect to any Note the greater of

(A) (1% of the principal amount of such Note, and

(B) the excess (to the extent positive) of:

(i) the present value at such redemption date of (1) the redemption price of such Note at the date falling 24 months from the Transaction Effective Date (such redemption price (expressed in percentage of principal amount) being set forth in the table above under Section 5(b) (excluding accrued and unpaid interest)), plus (2) all required interest payments due on such Note to and including the date falling 24 months from the Transaction Effective Date (excluding accrued but unpaid interest), computed upon the redemption date using a discount rate equal to the Treasury Rate at such redemption date plus 50 basis points; over

(ii) the outstanding principal amount of such Note,

as calculated by the Issuer or on behalf of the Issuer by such Person as the Issuer shall designate. For the avoidance of doubt, calculation of Applicable Premium shall not be an obligation or duty of the Trustee or any Paying Agent or Registrar.

"*Treasury Rate*" means, as obtained by the Issuer, as of any date of redemption of Notes, the yield to maturity as of such date U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the date notice of the applicable redemption of Notes is sent in accordance with the Indenture (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the date falling 24 months from the Transaction Effective Date; *provided*, *however*, that if the period from such date to the date falling 24 months from the Transaction Effective Date, is less than one year, the weekly average yield on actively traded U.S. Treasury securities adjusted to a constant maturity of one year will be used.

(e) On or prior to the Initial Notes Repayment Date, (i) the Issuer may redeem and (ii) following any acceleration of the principal amount of Initial Notes prior to their Stated Maturity the Issuer shall be required to redeem, all or, from time to time, part of the Initial Notes upon not less than 10 nor more than 60 days' notice to the Holder, at a redemption price equal to 100% of the principal amount of the Initial Notes plus the Initial Notes Repayment Date Premium and accrued and unpaid interest and Additional Amounts, if any, to, but not including, the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date). Following the Initial Notes Repayment Date no Initial Notes Repayment Date Premium shall be due.

"*Initial Notes Repayment Date*" means the earlier to occur of:

(A) the date on which the Lock-Up Agreement is terminated: (i) pursuant to Clause 9.1(a) of the Lock-Up Agreement; (ii) pursuant to Clauses 9.1(b)(iii), 9.1(b)(iv), 9.1 (c)(iv) or 9.1(c)(v) of the Lock-Up Agreement as a result of a breach or misrepresentation, as applicable, by any holder of the Notes in its capacity as a "Consenting Noteholder" under the Lock-Up Agreement; (iii) pursuant to Clause 9.2(b) of the Lock Up Agreement; (iv) because a scheme of arrangement seeking to implement the Transaction fails to get the requisite creditor consent or is not sanctioned by the court; (v) pursuant to Clauses 9.1(c)(viii) or 9.1(d)(viii) of the Lock Up Agreement where the event of default under the Lock-Up Agreement is termination of the Lock Up Agreement in the circumstances described in sub-clauses (iii) and (iv) of this paragraph (A); or (vi) pursuant to Clause 9.2(c) of the Lock-Up Agreement as a result of the Transaction Effective Date having occurred;

(B) the date falling three months after the Lock-Up Agreement is terminated in accordance with its terms; and

(C) the Parent or the Issuer becomes subject to Chapter 11 proceedings under the United States Bankruptcy Code of 1978, as amended, administration, liquidation, receivership (in any form) or an analogous procedure in any jurisdiction, including under Bankruptcy Law.

"*Initial Notes Repayment Date Premium*" means, for each $1,000 in principal amount of Initial Notes to be redeemed in accordance with this Section 5 or accelerated in accordance with Section 17, as applicable, an amount equal to $437.5.

6. Optional Tax Redemption.

The Issuer may redeem the Notes in whole, but not in part, at any time upon giving not less than 10 nor more than 60 days' prior notice to the Holders of the Notes (which notice will be irrevocable) at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, if any, to the date fixed for redemption (a "*Tax Redemption Date*") (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date) and all Additional Amounts (as defined in Section 4.13 of the Indenture), if any, then due and which will become due on the Tax Redemption Date as a result of the redemption or otherwise, if any, if the Issuer determines in good faith that, as a result of:

(1) any change in, or amendment to, the law or treaties (or any regulations or rulings promulgated thereunder) of a Relevant Taxing Jurisdiction (as defined in Section 4.13 of the Indenture) affecting taxation; or

(2) any amendment to, or change in an official application or interpretation of such laws, treaties, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction or a change in published administrative practice) (each of the foregoing in clauses (1) and (2), a "*Change in Tax Law*"),

a Payor (as defined below) is, or on the next interest payment date in respect of the Notes would be, required to pay Additional Amounts with respect of the Notes (but, in the case of a Guarantor, only if the payment giving rise to such requirement cannot be made by the Issuer or another Guarantor who can make such payment without the obligation to pay Additional Amounts) and such obligation cannot be avoided by taking reasonable measures available to the Payor (including, for the avoidance of doubt, the appointment of a new Paying Agent where this would be reasonable). Such Change in Tax Law must be announced and become effective on or after the Issue Date (or if the applicable Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction on a date after the Issue Date, such later date). The foregoing provisions shall apply *mutatis mutandis* to any successor Person, after such successor Person becomes a party to the Indenture, with respect to a change or amendment occurring after the time such successor Person becomes a party to the Indenture.

Notice of redemption for taxation reasons will be published in accordance with the procedures described in Section 8. Notwithstanding the foregoing, no such notice of redemption will be given (a) earlier than 60 days prior to the earliest date on which the Payor would be obligated to make such payment of Additional Amounts and (b) unless at the time such notice is given, such obligation to pay such Additional Amounts remains in effect. Prior to the publication or mailing of any notice of redemption of Notes pursuant to the foregoing, the Issuer will deliver to the Trustee (a) an Officer's Certificate stating that it is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to its right so to redeem have been satisfied and (b) an opinion of an independent tax counsel of recognized standing to the effect that the Payor has been or will become obligated to pay Additional Amounts as a result of a Change in Tax Law. The Trustee shall be entitled to rely on such Officer's Certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, without further inquiry, in which event it will be conclusive and binding on the Holders.

7. Mandatory Redemption and Sinking Fund.

(a) Except as provided in this Section 7, the Issuer is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes.

(b) [If, on the Transaction Effective Date, the Issuer issues Additional Notes with aggregate principal amount in excess of $20.0 million, the Issuer shall be required to redeem an aggregate principal amount of Initial Notes equivalent to the Initial Notes Reduction Amount on a *pro rata* basis at a redemption price equal to 100% of the principal thereof, plus accrued and unpaid interest and Additional Amounts, if any, to, but not including, the date of redemption, which shall be the Business Day following the Transaction Effective Date. No notice of redemption shall be required to be provided to Holders in respect of the redemption set forth in this clause (b). For the avoidance of doubt, the Initial Note Repayment Date Premium shall not apply in respect of the redemption set forth in this clause (b).][*To include only in the Notes to be issued on the Issue Date*]

8. Notice of Redemption.

Subject to the next paragraph, not less than 10 days but not more than 60 days before a date for redemption of Notes, the Issuer shall transmit to each Holder (with a copy to the Trustee and Registrar) a notice of redemption in accordance with Section 12.01 of the Indenture; *provided*, *however*, that any notice of redemption provided for by Section 6 shall not be given (a) earlier than 60 days prior to the earliest date on which the Payor would be obligated to make a payment of Additional Amounts and (b) unless at the time such notice is given, the obligation to pay such Additional Amounts remains in effect. In addition, for so long as the Notes are listed on the Global Exchange Market of Euronext Dublin and the rules thereof so require, the Issuer shall publish notice of redemption in a daily newspaper with general circulation in Ireland (which is expected to be *The Irish Times*) and in addition to such publication, not less than 10 nor more than 60 days prior to the redemption date, mail such notice to Holders by first-class mail, postage prepaid, at their respective addresses as they appear on the registration books of the Registrar. While in global form, notices to Holders may be delivered via Euroclear or Clearstream and in accordance with the applicable procedures of Euroclear or Clearstream in lieu of notice via registered mail. Such notice of redemption may also be published on the website of Euronext Dublin (*www.euronext.com/en/markets/dublin)* in lieu of publication in a daily newspaper to the extent and as permitted by the rules of Euronext Dublin. The notice shall identify the Notes to be redeemed and shall state the information required pursuant to Section 3.03 of the Indenture.

At the Issuer's request, the Trustee or the Paying Agent shall give the notice of redemption in the Issuer's name and at the Issuer's expense. In such event, the Issuer shall deliver to the Trustee and the Paying Agent, with a copy to the Trustee, at least 5 Business Days prior to the date on which notice of redemption is to be delivered to the Holders (unless a shorter period is satisfactory to the Registrar), an Officer's Certificate requesting that the Registrar give such notice and the information required and within the time periods specified by this Section 8.

If less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes to be redeemed as follows: (i) if the Notes are listed on any securities exchange, in compliance with the requirements of the principal securities exchange on which the Notes are listed or (ii) if the Notes are not listed on any securities exchange, on a *pro rata* basis, by lot or by such method as the Trustee deems fair and appropriate and in accordance with Euroclear or Clearstream procedures, *provided*, *however*, that no such partial redemption shall reduce the portion of the principal amount of a Note not redeemed to less than $1,000. None of the Trustee, the Paying Agent nor the Registrar will be liable for any selections made by it in accordance with this paragraph.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed. In the case of a Definitive Registered Note, a new Definitive Registered Note in principal amount equal to the unredeemed portion of any Definitive Registered Note redeemed in part will be issued in the name of the Holder thereof upon cancellation of the original Definitive Registered Note. In the case of a Global Note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof. Subject to the terms of the applicable redemption notice, Notes called for redemption become due on the date fixed for redemption. Unless the Issuer defaults in payment of the redemption price, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption. If the Issuer elects to redeem the Notes or portions thereof and request the Trustee to distribute to the Holders of the Notes any amounts deposited in trust (which, for the avoidance of doubt, will include accrued and unpaid interest to the date fixed for redemption) prior to the date fixed for redemption in accordance with the provisions set forth under Section 8.01 the applicable redemption notice will state that Holders of the Notes will receive such amounts deposited in trust prior to the date fixed for redemption and the payment date.

9. Additional Amounts.

All payments made by a Payor on the Notes or any Note Guarantee, as applicable, will be made free and clear of and without withholding or deduction for, or on account of, any Taxes subject to and in accordance with Section 4.13 of the Indenture.

10. Repurchase of Notes at the Option of Holders upon (i) a Change of Control and (ii) the occurrence of certain Asset Sales.

If a Change of Control occurs, each Holder of Notes will have the right, subject to certain conditions specified in the Indenture, to require the Issuer to repurchase all or any part of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount of the Notes, plus accrued and unpaid interest to but excluding the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.

In accordance with Section 4.05 of the Indenture, the Issuer will be required to, or may be permitted to, offer to purchase Notes upon the occurrence of certain events, including certain Asset Dispositions.

11. [Reserved]

12. Denominations, Transfer and Exchange.

The Notes are in registered form without interest coupons in minimum denominations of $1.00 and multiples of $1.00 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The transfer of Notes may be registered, and Notes may be exchanged, as provided in the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture.

13. Persons Deemed Owners.

Except as provided in Section 2, the registered Holder of this Note will be treated as the owner of it for all purposes. Only registered Holders will have rights under the Indenture, including, without limitation, with respect to enforcement and the pursuit of other remedies.

14. Unclaimed Money.

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuer at its written request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look to the Issuer for payment as general creditors and the Trustee and the Paying Agent shall have no further liability with respect to such monies.

15. Discharge and Defeasance.

Subject to certain conditions, the Issuer at any time may terminate all of its obligations and all obligations of each Guarantor under the Notes, any Note Guarantee and the Indenture if the Issuer, among other things, deposits or causes to be deposited with the Trustee money or U.S. dollar-denominated Government Obligations, or a combination thereof, in an amount sufficient, without consideration of reinvestment, to pay and discharge the entire indebtedness on the Notes not previously delivered to the Trustee for cancellation, for principal, premium, if any, and interest to the date of deposit (in the case of Notes that have become due and payable), or to the Stated Maturity or redemption date, as the case may be.

16. Amendment, Waiver.

The Indenture and the Notes may be amended as set forth in the Indenture.

17. Defaults and Remedies.

Each of the following is an "*Event of Default*" under the Indenture:

(a) default in any payment of interest on any Note issued under the Indenture when due and payable, continued for 30 days;

(b) default in the payment of the principal amount of or premium, if any, on any Note issued under the Indenture when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;

(c) failure by the Issuer or any Guarantor to comply with its obligations under Section 5.01;

(d) failure by the Issuer or any Guarantor to comply for 30 days after written notice by the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes with its obligation to make a Change of Control Offer under Section 4.14;

(e) failure by the Parent or any of its Restricted Subsidiaries to comply for 60 days after notice by the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes with its other agreements contained in the Indenture (in each case, other than a default in performance, or breach of, a covenant or agreement specifically addressed in clauses (a) to (d) of this Section 17);

(f) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Parent or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Parent or any of its Restricted Subsidiaries) other than Indebtedness owed to the Parent or a Restricted Subsidiary whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default:

(i) is caused by a failure to pay principal at stated maturity on such Indebtedness, immediately upon the expiration of the grace period provided in such Indebtedness ("*payment default*"); or

(ii) results in the acceleration of such Indebtedness prior to its maturity (the "*cross acceleration provision*"),

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates $10.0 million or more;

(g) the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;

(iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) admits in writing that it is unable to pay its debts as they become due;

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in a proceeding in which the Issuer or any such other Restricted Subsidiary, that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; or

(iii) orders the winding up or liquidation of the Issuer or any other Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary,

and, in the case of any of (i), (ii) or (iii) of this clause (h), the order or decree remains un-stayed and in effect for 60 consecutive days;

(i) failure by the Issuer or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of $10.0 million (exclusive of any amounts that a solvent insurance company has acknowledged liability for), which judgments are not paid, discharged or stayed for a period of 60 days after the judgment becomes final (the "*judgment default provision*");

(j) any Note Guarantee ceases to be in full force and effect (other than in accordance with the terms of such Note Guarantee or this Indenture) or is declared invalid or unenforceable in a judicial proceeding or any Guarantor denies or disaffirms in writing its obligations under its Note Guarantee and any such Default continues for 10 days;

(k) any security interest under the Security Documents on any Collateral having a fair market value in excess of $5.0 million shall, at any time, cease to be in full force and effect (other than in accordance with the terms of the relevant Security Document, the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement, and this Indenture) for any reason other than the satisfaction in full of all obligations under this Indenture or the release or amendment of any such security interest in accordance with the terms of this Indenture, the Intercreditor Agreement, the ABL Intercreditor Agreement and any Additional Intercreditor Agreement or such Security Document or any such security interest created thereunder shall be declared invalid or unenforceable or the Parent, the Issuer or any other Restricted Subsidiary shall assert in writing that any such security interest is invalid or unenforceable and any such Default continues for 10 days;

(l) any default under any ABL Facility of the Parent or any of its Restricted Subsidiaries involving a principal amount of Indebtedness of $10.0 million or more in the aggregate, the effect of which is to permit the lenders under such ABL Facility to cause the Indebtedness under such ABL Facility to become due or to require the prepayment, repurchase, defeasance or redemption of the Indebtedness under such ABL Facility prior to its stated maturity; *provided* that this Section 6.01(l) shall not apply to the Indebtedness under any such ABL Facility that becomes due as a result of a refinancing thereof permitted by this Indenture; or

(m) the Lock-Up Agreement is terminated in accordance with its terms other than (x)(a) pursuant to clause 9.1(a) of the Lock-Up Agreement or (b) pursuant to clauses 9.1(b)(iii), 9.1(b)(iv), 9.1 (c)(iv), or 9.1(c)(v) of the Lock-Up Agreement as a result of a breach or misrepresentation, as applicable, by the holders of the Notes in their capacity as "Consenting Noteholders" under the Lock-Up Agreement or (y) pursuant to clause 9.2 (c) of the Lock-Up Agreement.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court of any order, rule or regulation of any administrative or governmental body. However, a default under clause (c), (d), (e), (f), (i), (k) or (l) will not constitute an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes under the Indenture notify the Parent of the default and, with respect to clause (d), (e), (i) or (k), the Parent does not cure such default within the time specified in clause (d), (e), (i) or (k), as applicable, after receipt of such notice.

18. Trustee Dealings with the Issuer

The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuer or its Affiliates and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee.

19. No Recourse Against Others.

No director, officer, employee, incorporator or shareholder of the Parent or any of their respective Subsidiaries or Affiliates as such, shall have any liability for any obligations of the Issuer or the Guarantors under the Notes Documents, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the U.S. federal securities laws, and it is the view of the SEC that such a waiver is against public policy.

20. Authentication.

This Note shall not be valid until an authorized signatory of the Trustee or the Authenticating Agent manually signs the certificate of authentication on the other side of this Note. The signature shall be conclusive evidence that the security has been authenticated under the Indenture.

21. Abbreviations.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

22. Governing Law.

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Issuer will furnish to any Holder of Notes upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Note.

[ASSIGNMENT FORM]

To assign this Note, fill in the form below:

I or we assign and transfer this Note to:

(Print or type assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. No.)

(Insert assignee's name, address and zip or post code)

and irrevocably appoint

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to transfer this Note on the books of the Issuer. The agent may substitute another to act for it.

Date: _____

Your Signature:

Sign exactly as your name appears on the other side of this Note.

Signature Guarantee*:

---

*(Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee)

[FORM OF CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFER RESTRICTED NOTES]

This certificate relates to $[●] principal amount of Notes held in (check applicable box) book-entry or definitive registered form by the undersigned.

The undersigned (check one box below):

☐ as requested the Trustee by written order to deliver, in exchange for its beneficial interest in the Global Note held by the Common Depositary, a Definitive Registered Note in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Note (or the portion thereof indicated above);

☐ as requested the Trustee by written order to exchange or register the transfer of a Note.

In connection with any transfer of any of the Notes evidenced by this certificate occurring prior to the expiration of the period referred to in Rule 144(d) under the Securities Act, the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

(1) ☐ to the Issuer; or

(2) ☐ to the Registrar for registration in the name of the Holder, without transfer; or

(3) ☐ pursuant to an effective registration statement under the Securities Act; or

(4) ☐ inside the United Sates to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A; or

(5) ☐ outside the United Sates in an offshore transaction within the meaning of Regulation S in compliance with Rule 904 under the Securities Act;

(6) ☐ to an institutional investor that is an accredited investor within the meaning of Rule 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) of Regulation D in a transaction exempt from the registration requirements of the Securities Act; or

(7) ☐ pursuant to Rule 144 under the Securities Act or another available exemption from registration.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof; *provided*, *however*, that if box (5), (6) or (7) is checked, the Trustee may require, prior to registering any such transfer of the Notes, such legal opinions, certifications and other information as the Trustee or the Issuer have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

Date: _____

Your Signature:

_____

Sign exactly as your name appears on the other side of this Note.

Signature
Guarantee*: _____

*(Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee)

TO BE COMPLETED BY PURCHASER IF (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____

Signature: _____

(to be executed by an executive officer of purchaser)

TO BE COMPLETED BY PURCHASER IF (6) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3), (7), (8), (9), (12) or (13) of Regulation D in a transaction meeting the requirements of Rule 506 of Regulation D or such other applicable exemption and the purchase of this Note is in compliance with any applicable blue sky securities laws of any state or territory of the United States.

Date: _____

Signature: _____

(to be executed by an executive officer of purchaser)

Schedule of Increases and Decreases in the Global Notes

The initial principal amount of this Global Note is $[●]. The following increases or decreases in this Global Note have been made:

Date of Increase/Decrease	Amount of Decrease in Principal Amount of this Global Note	Amount of Increase in Principal Amount of this Global Note	Principal Amount of this Global Note Following such Decrease or Increase	Signature of Authorized Signatory of Registrar or Paying Agent

[FORM OF OPTION OF HOLDER TO ELECT PURCHASE]

If you want to elect to have this Note purchased by the Issuer pursuant to Section 4.14 (*Change of Control*) or Section 4.05 (*Limitation on Sales of Assets and Subsidiary Stock*) of the Indenture, check the box:

Asset Disposition ☐ Change of Control ☐

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 4.14 or Section 4.05 of the Indenture, state the amount (minimum amount of $1.00):

$ _____

Date: _____

Your Signature:

_____

(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee*: _____

*(SIGNATURE MUST BE GUARANTEED BY A PARTICIPANT IN A RECOGNIZED SIGNATURE GUARANTY MEDALLION PROGRAM OR OTHER SIGNATURE GUARANTOR ACCEPTABLE TO THE TRUSTEE)

EXHIBIT B

FORM OF SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE No. [●] (this "*Supplemental Indenture*"), dated as of [●], among [●], a company organized and existing under the laws of [●] (the "*Additional Guarantor*"), a subsidiary of Ferroglobe PLC, a public limited company incorporated

under the laws of England and Wales (the "*Parent*"), Ferroglobe Finance Company, PLC, a public limited company incorporated under the laws of England and Wales (the "*Issuer*") and GLAS Trustees Limited, as trustee (the "*Trustee*").

W I T N E S S E T H

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of May 17, 2021 providing for the issuance of the Issuer's U.S. dollar-denominated 9.0% Senior Secured Notes due 2025 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances a Subsidiary may execute and deliver to the Trustee a supplemental indenture pursuant to which such Subsidiary shall unconditionally guarantee all of the Issuer's obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Note Guarantee*"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Issuer, the Additional Guarantor and the Trustee are authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Additional Guarantor and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. Agreement to Guarantee. The Additional Guarantor hereby agrees to provide an unconditional Note Guarantee on the terms and subject to the conditions set forth in the Note Guarantee and in the Indenture including but not limited to Article X thereof.

[In addition, pursuant to Section 10.07 of the Indenture, the obligations of the [Guarantor]/[Additional Guarantor] and the granting of its Guarantee shall be limited as follows: [●].]

3. No Recourse Against Others. No past, present or future director, officer, employee, incorporator or stockholder of any Additional Guarantor, as such, shall have any liability for any obligations of the Issuer or any Additional Guarantor under the Notes, the Indenture, the Note Guarantees or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under applicable securities laws.

4. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE, THE NOTES AND THE NOTE GUARANTEES.

5. Each of the parties hereto irrevocably agrees that any suit, action or proceeding arising out of, related to, or in connection with the Indenture, this Supplemental Indenture, the Notes and the Note Guarantees or the transactions contemplated hereby, and any action arising under U.S. Federal or state securities laws, may be instituted in any U.S. federal or state court located in the State and City of New York, Borough of Manhattan; irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such proceeding; and irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding. The Issuer and each of the Guarantors (including the Additional Guarantor) has appointed (or hereby appoints) Globe Specialty Metals, Inc., as its authorized agent (the "*Authorized Agent*") upon whom process may be served in any such suit, action or proceeding which may be instituted in any Federal or state court located in the State of New York, Borough of Manhattan arising out of or based upon the Indenture, this Supplemental Indenture, the Notes or the transactions contemplated hereby or thereby, and any action brought under U.S. Federal or state securities laws. The Issuer and each of the Guarantors (including the Additional Guarantor) expressly consents to the jurisdiction of any such court in respect of any such action and waives any other requirements of or objections to personal jurisdiction with respect thereto and waives any right to trial by jury. Such appointment shall be irrevocable unless and until replaced by an agent reasonably acceptable to the Trustee. The Issuer and each of the Guarantors (including the Additional Guarantor) represents and warrants that the Authorized Agent has agreed to act as said agent for service of process, and the Issuer agrees to take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue such appointment in full force and effect

as aforesaid. Service of process upon the Authorized Agent and written notice of such service to the Issuer shall be deemed, in every respect, effective service of process upon the Issuer and the Guarantors (including the Additional Guarantor).

6. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

7. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

8. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Additional Guarantor and the Issuer.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

FERROGLOBE FINANCE COMPANY PLC

By: _____
Name:
Title:

[ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

GLAS Trustees Limited, as Trustee

By: _____
Name:
Title: Authorized Signatory

EXHIBIT C

FORM OF ABL INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT

dated as of _____ __, 2021

among

[_____],
as ABL Agent
under the ABL Credit Agreement,

[_____],
as Senior Note Agent
under the **[Senior Secured Note Agreement]**,

and

[_____],
as Junior Note Agent
under the **[Junior Secured Note Agreement]**

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This INTERCREDITOR AGREEMENT is dated as of **[_____ __, 2021]**, and is among [_____], in its capacity as agent under the ABL Credit Agreement (defined below), together with its successors and assigns in such capacity (the "ABL Agent"), **[_____]**, in its capacity as collateral agent under the Senior Secured Note Agreement (defined below), together with its successors and assigns in such capacity (the "Senior Note Agent"), and **[_____]**, in its capacity as collateral agent under the Junior Secured Note Agreement (defined below), together with its successors and assigns in such capacity (the "Junior Note Agent").

RECITALS:

WHEREAS, [_____], the "ABL Borrowers", and each an "ABL Borrower"), the lenders party thereto (the "ABL Lenders"), and ABL Agent have entered into that certain [_____], dated as of [_____] (as amended, restated, supplemented or otherwise modified and in effect from time to time, including any Permitted Refinancing thereof, the "ABL Credit Agreement"), providing for a revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to the ABL Borrowers. The obligation of the ABL Borrowers to repay such loans and other financial accommodations under the ABL Credit Agreement are guaranteed by the ABL Borrowers and each Subsidiary of the ABL Borrowers listed on the signature pages thereto as a "Guarantor" (together with each other Person that executes a joinder agreement to become a "guarantor" thereunder or otherwise guaranties all or any part of the ABL Obligations (defined below), each an "ABL Guarantor" and, collectively, the "ABL Guarantors");

WHEREAS, [●], a [●], [●], a [●] (the "Senior Issuer[s]"), the note holders party thereto (the "Senior Note Holders"), and the Senior Note Agent have entered into that certain [Indenture] dated as of [●], 2021 (as amended, restated, supplemented or otherwise modified and in effect from time to time or as otherwise refinanced from time to time, the "Senior Secured Note Agreement"). The obligation of the Senior Issuer[s] to repay the Senior Note Obligations (defined below) is guaranteed by [each/the] Senior Issuer and each Subsidiary of the Senior Issuer[s] [listed on the signature pages thereto as a "Guarantor"] (together with each other Person that executes a joinder agreement to become a "guarantor" thereunder or otherwise guaranties all or any part of the Senior Note Obligations, each a "Senior Note Guarantor" and, collectively, the "Senior Note Guarantors") **[Confirm structure/obligors/guarantors]**;

WHEREAS, [●], a [●], [●], a [●] (the "Junior Issuer[s]"), the note holders party thereto (the "Junior Note Holders"), and the Junior Note Agent have entered into that certain [Indenture], dated as of [●], 2021 (as amended, restated, supplemented or otherwise modified and in effect from time to time, or as otherwise refinanced from time to time, the "Junior Secured Note Agreement"). The obligation of the Junior Issuer[s] to repay the Junior Note Obligations (defined below) is guaranteed by [each/the] the Junior Issuer and each Subsidiary of the Junior Issuer[s] [listed on the signature pages thereto as a "Guarantor"] (together with each other Person that executes a joinder agreement to become a "guarantor" thereunder or otherwise guaranties all or any part of the Junior Note Obligations, each a "Junior Note Guarantor" and, collectively, the "Junior Note Guarantors") **[Confirm structure/obligors/guarantors]**;

WHEREAS, the ABL Borrower[s] and the ABL Guarantors intend to secure the ABL Obligations under the ABL Credit Agreement and any other ABL Documents (including any Permitted Refinancing thereof) with a Senior Priority Lien on the ABL Priority Collateral and a Junior Priority Lien on the Note Priority Collateral;

WHEREAS, subject to the Notes Intercreditor Agreement, the Senior Issuer[s,] and the Senior Note Guarantors intend to secure the Senior Note Obligations under the Senior Secured Note Agreement and any other Senior Note Documents (including any Permitted Refinancing thereof) with a Senior Priority Lien on the Note Priority Collateral and a Junior Priority Lien on the ABL Priority Collateral; and

WHEREAS, subject to the Notes Intercreditor Agreement the Junior Issuer[s,] and the Junior Note Guarantors, intend to secure the Junior Note Obligations under the Junior Secured Note Agreement and any other Junior Note Documents (including any Permitted Refinancing thereof) with a Senior Priority Lien on the Note Priority Collateral and a Junior Priority Lien on the ABL Priority Collateral;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

Section 1. Definitions.

1.1. UCC Definitions. Except as the context may require with respect to matters governed under the PPSA, with respect to matters governed by the UCC any terms (whether capitalized or lower case) used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern. Except as the context may require with respect to matters governed under the UCC, with respect to matters governed by the PPSA any terms (whether capitalized or lower case) used in this Agreement that are defined in the PPSA shall be construed and defined as set forth in the PPSA unless otherwise defined herein.

1.2. Other Defined Terms. The following terms when used in this Agreement, including its preamble and recitals, shall have the following meanings:

"ABL Agent" shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the "Agent", the "Administrative Agent", the "Collateral Agent" or similar agency designation under any ABL Credit Agreement and includes any New Senior Priority Agent that becomes the new ABL Agent to the extent set forth in Section 2.4(f).

"ABL Agent Advances" shall mean any and all loans, advances or other financial accommodations made or permitted by the ABL Agent pursuant to Section [___] of the ABL Credit Agreement including all "Protective Advances" as defined under the ABL Credit Agreement (or any comparable provision of any agreement, document or instrument providing for or evidencing any Refinancing of any ABL Obligations).

"ABL Credit Agreement" shall have the meaning set forth in the recitals hereto.

"ABL Default" shall mean any "Event of Default", as defined in any ABL Document.

"ABL Default Dispositions" shall have the meaning set forth in Section 2.4(a)(ii).

"ABL DIP Financing" shall mean any Senior Priority DIP Financing consented to by the ABL Agent.

"ABL Documents" shall mean (a) the ABL Credit Agreement and the Other Documents (as defined in the ABL Credit Agreement), including the ABL Security Documents and (b) each of the other agreements, documents and instruments providing for or evidencing any ABL Obligations (including any Permitted Refinancing of any ABL Obligations), and any other document or instrument executed or delivered at any time in connection with any ABL Obligations (including any Permitted Refinancing of any ABL Obligations), together with any amendments, replacements, modifications, extensions, renewals or supplements to, or restatements of, any of the foregoing, including each of the documents executed in connection with any ABL DIP Financing provided by the ABL Agent and any ABL Lenders unless such documents expressly provide at the time executed that they shall not constitute ABL Documents for purposes of this Agreement and that the debt thereunder shall not constitute ABL Obligations for purposes of this Agreement.

"ABL Lenders" shall have the meaning set forth in the recitals hereto.

"ABL Obligations" shall mean all Obligations (as defined in the ABL Credit Agreement), and all other amounts owing, due, or secured under the terms of the ABL Credit Agreement or any other ABL Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys' fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, letters of credit, Bank Product Obligations, obligations to provide cash collateral in respect of letters of credit or Bank Product Obligations or indemnities in respect thereof, any other indemnities or guarantees, and all other amounts payable under or secured by any ABL Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency or Liquidation Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the ABL Documents but for the commencement of the Insolvency or Liquidation Proceeding), in each case, whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, including all Enforcement Expenses and Indemnity Amounts. For the avoidance of doubt, the foregoing shall constitute "ABL Obligations" notwithstanding any limitations on, restrictions of, or agreements by, Grantors in the Senior Note Documents or Junior Note Documents with respect to the incurrence of any ABL Obligations.

"ABL Permitted Liens" shall mean the "Permitted Liens" under, and as defined in, the ABL Credit Agreement as in effect on the date hereof and as amended in accordance with the terms of this Agreement.

“ABL Permitted Priority Liens” shall mean the "Permitted Liens" (or substantially similar term) under, and as defined in, the ABL Credit Agreement as in effect on the ABL Agent Joinder Effective Date and as amended in accordance with this Agreement (or substantially similar term in any Permitted Refinancing) that are, pursuant to the terms thereof, permitted to have priority over the Liens securing the ABL Priority Obligations.

"ABL Priority Collateral" shall mean all of the following assets that constitute Collateral, whether now owned or hereafter acquired (including any of the following assets acquired or created after the commencement of any Insolvency or Liquidation Proceeding) and wherever located (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law), would constitute ABL Priority Collateral):

(a) all Accounts[1] (other than Accounts that are identifiable Proceeds of Notes Priority Collateral);

(b) all Payment Intangibles and all other rights of payment, including all corporate and other tax refunds and all credit card receivables and all other rights to payment arising therefrom in a credit-card, debit-card, prepaid-card or other payment-card transaction (other than any payment intangibles constituting identifiable Proceeds of Notes Priority Collateral);

(c) all Inventory (including, for the avoidance of doubt, Inventory that is or becomes branded, or produced through the use or other application of, any Intellectual Property and including rights in all returned or repossessed Inventory);

(d) all Deposit Accounts, Securities Accounts and Commodity Accounts and all Money or other assets (including all cash equivalents), Financial Assets and Securities Entitlements contained in, or credited to, or arising from any such Deposit Accounts, Securities Accounts or Commodity Accounts (in each case, except to the extent constituting identifiable Proceeds of Notes Priority Collateral);

(e) all claims under, proceeds of and rights to business interruption insurance and all claims under, proceeds of and rights to credit insurance with respect to any accounts (in each case, regardless of whether ABL Agent is a loss payee thereof);

(f) to the extent evidencing, governing, securing or otherwise relating to any of the items constituting ABL Priority Collateral under clauses (a) through (e) above, (i) all General Intangibles (excluding Intellectual Property (but subject to the rights of the ABL Agent under Section 4.2) and all Capital Stock in any of the Note Guarantors and any Subsidiary of a Note Guarantor), including Indebtedness (or any evidence thereof) between or among any of the Borrowers and ABL Guarantors, all contract rights as against operators of storage facilities and as against other transporters of Inventory and all rights as consignor or consignee, whether arising by contract, statute or otherwise, (ii) Instruments (including Promissory Notes), (iii) Documents (including each warehouse receipt or bill of lading covering any Inventory), (iv) in addition to clause (e) of this definition, claims under, proceeds of and rights to insurance policies (regardless of whether ABL Agent is a loss payee thereof), (v) licenses from any governmental authority to sell or to manufacture any Inventory, (vi) all Chattel Paper (including all Electronic Chattel Paper and all Tangible Chattel Paper) and (vii) Commercial Tort Claims;

[1] Rely on UCC definition of "Accounts".

(g) all collateral and guarantees given by any other Person with respect to any of the foregoing;

(h) all Supporting Obligations (including Letter-of-Credit Rights) and all Proceeds and products of any of the foregoing, and all "adequate protection" payments (or similar payments under applicable Bankruptcy Law) made using any of the foregoing included in clauses (a) through this clause (h) in respect of ABL Obligations in any Insolvency or Liquidation Proceeding (other than adequate protection payments made with Note Priority Collateral or proceeds of any Note DIP Financing); and

(i) all books and Records, customer lists, credit files, accounting systems, computer files, programs, printouts and other computer materials, in each case, to the extent evidencing or relating to any of the foregoing.

"ABL Priority Obligations" shall mean all ABL Obligations other than Excess ABL Debt.

"ABL Secured Parties" shall mean the ABL Lenders (including, in any event, each letter of credit issuer and each swingline lender), any provider of Cash Management Products and Services, Lender-Provided Foreign Currency Hedges and/or Lender-Provided

Interest Rate Hedges and the ABL Agent and shall include all former ABL Lenders, providers of Cash Management Products and Services, Lender-Provided Foreign Currency Hedges and/or Lender-Provided Interest Rate Hedges and agents under the ABL Credit Agreement to the extent that any ABL Obligations owing to such Persons were incurred while such Persons were ABL Lenders, providers of Cash Management Products and Services, Lender-Provided Foreign Currency Hedges and/or Lender-Provided Interest Rate Hedges or agents under the ABL Credit Agreement and such ABL Obligations have not been paid or satisfied in full and all new ABL Secured Parties to the extent set forth in Section 2.4(f).

"ABL Security Document" shall mean any agreement, document or instrument pursuant to which a Lien is granted by one or more of the Borrowers or any other Grantor securing any ABL Obligations (including any Permitted Refinancing of any ABL Obligations) or under which rights or remedies with respect to such Liens are governed, together with any amendments, replacements, modifications, extensions, renewals or supplements to, or restatements of, any of the foregoing, to the extent permitted hereby.

"Access Period" shall have the meaning set forth in Section 4.3.

"Additional Junior Note Obligations" means obligations with respect to Indebtedness of the Borrowers or the Guarantors (other than, for the avoidance of doubt, Junior Note Obligations) issued or guaranteed following the date of this Agreement and documented in an agreement other than any agreement governing any then existing Junior Note Obligations, provided that (a) such Indebtedness is permitted by the terms of each of the ABL Credit Agreement, Senior Secured Note Agreement, the Junior Secured Note Agreement and any then existing Additional Senior Note Obligations Agreement and Additional Junior Note Obligations Agreement to be secured by Liens on the Collateral ranking *pari passu* with the Liens securing the Junior Note Obligations, (b) the Borrowers and the Guarantors have granted or purport to have granted Liens on the Collateral to secure the obligations in respect of such Indebtedness on a *pari passu* basis with the other Junior Note Obligations, (c) the applicable Additional Junior Note Obligations Agent, for itself and on behalf of the holders of such Indebtedness and obligations in respect of such Indebtedness, has entered into a Joinder Agreement pursuant to Section 6.21(b) acknowledging that such Indebtedness, obligations and Liens shall be subject to, and such Additional Junior Note Obligations Agent and such holders shall be bound by, and shall have rights and obligations provided under, the terms of this Agreement applicable to the Junior Note Agent and the other Junior Note Secured Parties, respectively and (d) an amendment to or other modification of this Agreement shall have been entered into pursuant to Section 6.3 to the extent contemplated and requested pursuant to Section 6.21(c).

"Additional Junior Note Obligations Agent" means any Person appointed to act as trustee, agent or similar representative for the holders of Additional Junior Note Obligations pursuant to any Additional Junior Note Obligations Agreement (including, in the case of any bilateral arrangement, the actual holder of the relevant Additional Junior Note Obligations unless such holder has otherwise appointed a trustee, agent or similar representative acting on its behalf) and has been designated as such in the applicable Joinder Agreement, and any successor thereto.

"Additional Junior Note Obligations Agreements" means (i) the indenture, credit agreement, guarantee or other agreement evidencing or governing any Additional Junior Note Obligations that are designated as Additional Junior Note Obligations pursuant to Section 6.21 and (ii) any other "Note Documents", "Loan Documents" or "Financing Documents" (or similar term as may be defined in the foregoing or referred to in the foregoing), in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

"Additional Junior Note Obligations Claimholders" means, at any relevant time, the lenders, creditors and secured parties under any Additional Junior Note Obligations Agreements, any Additional Junior Note Obligations Agent and the other agents under such Additional Junior Note Obligations Agreements, in each case, in their capacities as such.

"Additional Note Obligations" means, collectively, the Additional Senior Note Obligations and the Additional Junior Note Obligations.

"Additional Note Obligations Agent" means the Additional Senior Note Obligations Agent and/or the Additional Junior Note Obligations Agent, as applicable.

"Additional Note Obligations Agreements" means, collectively, the Additional Senior Note Obligations Agreements and the Additional Junior Note Obligations Agreements.

"Additional Note Obligations Secured Parties" means, collectively, the Additional Senior Note Obligations Secured Parties and the Additional Junior Note Obligations Secured Parties.

"Additional Senior Note Obligations" means obligations with respect to Indebtedness of the Borrowers or any other Guarantor (other than, for the avoidance of doubt, Senior Note Obligations) issued or guaranteed following the date of this Agreement and documented in an agreement other than any agreement governing any then existing Senior Note Obligations; provided that (a) such Indebtedness is permitted by the terms of each of the ABL Credit Agreement, Senior Secured Note Agreement, the Junior Secured Note Agreement and each then existing Additional Senior Note Obligations Agreement and Additional Junior Note Obligations Agreement to be secured by Liens on the Collateral ranking *pari passu* with the Liens securing the Senior Note Obligations, (b) the Borrowers and the Guarantors have granted or purport to have granted Liens on the Collateral to secure the obligations in respect of such Indebtedness on a *pari passu* basis with the other Senior Note Obligations, (c) the applicable Additional Senior Notes Obligations Agent, for itself and on behalf of the holders of such Indebtedness and obligations in respect of such Indebtedness, has entered into a Joinder Agreement pursuant to Section 6.21(b) acknowledging that such Indebtedness, obligations and Liens shall be subject to, and such Additional Senior Note Obligations Agent and such holders shall be bound by, and shall have the rights and obligations provided under, the terms of this Agreement applicable to the Senior Note Agent and the other Senior Note Secured Parties, respectively and (d) an amendment to or other modification of this Agreement shall have been entered into pursuant to Section 6.3 to the extent contemplated and requested pursuant to Section 6.21(c).

"Additional Senior Note Obligations Agent" means any Person appointed to act as trustee, agent or similar representative for the holders of Additional Senior Note Obligations pursuant to any Additional Senior Note Obligations Agreement (including, in the case of any bilateral arrangement, the actual holder of the relevant Additional Senior Note Obligations unless such holder has otherwise appointed a trustee, agent or similar representative acting on its behalf) and has been designated as such in the applicable Joinder Agreement, and any successor thereto.

"Additional Senior Note Obligations Agreements" means (i) the indenture, credit agreement, guarantee or other agreement evidencing or governing any Additional Senior Note Obligations that are designated as Additional Senior Note Obligations pursuant to Section 6.21 and (ii) any other "Note Documents", "Loan Documents," or "Financing Documents" (or similar term as may be defined in the foregoing or referred to in the foregoing), in each case, as refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

"Additional Senior Note Obligations Secured Parties" means, at any relevant time, the lenders, creditors and secured parties under any Additional Senior Note Obligations Agreements, any Additional Senior Note Obligations Agent and the other agents under such Additional Senior Note Obligations Agreements, in each case, in their capacities as such.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling (including all directors and officers of such Person), controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power (a) to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors (or equivalent governing body) of such Person or (b) to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; provided, that, neither any Agent nor any Secured Party (nor any Affiliate thereof) shall be considered an Affiliate of any Borrower or any Subsidiary thereof.

"Agreement" shall mean this Intercreditor Agreement as the same may be amended, modified, restated and/or supplemented from time to time in accordance with its terms.

"Bank Product Agreements" shall mean the agreements and documents pursuant to which Cash Management Products and Services, Lender-Provided Foreign Currency Hedges and/or Lender-Provided Interest Rate Hedges are provided.

"Bank Product Obligations" shall mean the ABL Obligations in respect of Cash Management Liabilities and Hedge Liabilities under Lender-Provided Interest Rate Hedges and/or Lender-Provided Foreign Currency Hedges.

"Bankruptcy Code" shall mean Title 11 of the United States Code as in effect from time to time or any successor statute.

"Bankruptcy Law" shall mean, as applicable, (i) the Bankruptcy Code, (ii) the BIA, (iii) the Companies' Creditors Arrangement Act (Canada) ("CCAA"), (iv) the Winding-Up and Restructuring Act (Canada), (v) the Canada Business Corporations Act (Canada) or provincial corporate laws where such statute is used by a Person to propose an arrangement or compromise of some or all of the debts of a Person or a stay of proceedings to enforce some or all of the claims of creditors against a Person, and (vi) any other federal, state, provincial or foreign law for the relief of debtors or affecting creditors' rights generally.

"BIA" means the Bankruptcy and Insolvency Act (Canada).

"Borrowers" shall mean the collective reference to the ABL Borrower[s], the Senior Note Issuer[s] and the Junior Note Issuer[s] and their respective successors and assigns; sometimes being referred to herein individually as a "Borrower".

"Business Day" shall mean any day except Saturday, Sunday and any day which shall be in New York City a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close.

"Capital Stock" shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"Capitalized Lease Obligation" shall mean, with respect to any Person, that portion of any obligation of such Person as lessee under a lease which at the time would be required to be capitalized on the balance sheet of such lessee in accordance with GAAP.

"Cash Management Liabilities" shall mean "Cash Management Liabilities", as defined in the ABL Credit Agreement (as in effect on the date hereof or any substantially similar term in any Permitted Refinancing).

"Cash Management Products and Services" shall mean "Cash Management Products and Services", as defined in the ABL Credit Agreement (as in effect on the date hereof or any substantially similar term in any Permitted Refinancing).

"Cash Proceeds" shall mean all Proceeds of any Collateral received by any Grantor or any Secured Party consisting of Money, cash equivalents or checks.

"Collateral" shall mean all assets and property (whether real, personal, movable or immovable), now owned or hereafter acquired (including any assets or property acquired or created after the commencement of any Insolvency or Liquidation Proceeding) with respect to which any security interests have been granted (or purported to be granted) by any Grantor pursuant to any ABL Security Document, Senior Note Security Document or Junior Note Security Document.

"Collateral Agents" shall mean the ABL Agent, the Senior Note Agent and the Junior Note Agent.

"Contingent Obligation" shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof;

provided, that, the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the lesser of (x) the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith and (y) the stated amount of such Contingent Obligation.

"Controlling Note Agent" shall mean the Security Agent as defined in the Notes Intercreditor Agreement; provided, that the Controlling Note Agent shall be the Junior Note Agent if the Discharge of Senior Note Priority Obligations has occurred; provided further that that the Controlling Note Agent shall be the Senior Note Agent if the Discharge of Junior Note Priority Obligations has occurred. For the avoidance of doubt, the Controlling Note Agent shall not be any Note Trustee (as defined in the Notes Intercreditor Agreement).

"Credit Agreements" shall mean the ABL Credit Agreement, the Senior Secured Note Agreement and the Junior Secured Note Agreement.

"Defaulting ABL Secured Party" shall have the meaning set forth in Section 3.7.

"DIP Financing" shall mean providing the Borrower or any other Grantor financing under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law.

"Discharge of ABL Priority Obligations" shall mean, except to the extent otherwise provided in Section 2.4(f) and subject to Section 6.17, the occurrence of all of the following:

(a) termination or expiration of all commitments to extend credit that would constitute ABL Priority Obligations;

(b) payment in full in cash of the principal of and interest and premium (if any) on all ABL Priority Obligations (other than any undrawn letters of credit);

(c) discharge or cash collateralization (at one hundred three percent (103%) of the aggregate undrawn amount) of, or back-to-back letters of credit (in form and substance reasonably acceptable to the ABL Agent) for, of all outstanding letters of credit constituting ABL Priority Obligations;

(d) discharge or cash collateralization (in accordance with the ABL Documents) of, or back-to-back letters of credit (in form and substance reasonably acceptable to the ABL Agent) for, all outstanding Bank Product Obligations constituting ABL Priority Obligations;

(e) payment in full in cash of all other ABL Priority Obligations that are outstanding and unpaid at the time the termination, expiration, discharge and/or cash collateralization set forth in clauses (a) through (d) above have occurred (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other contingent liabilities in respect of which no claim or demand for payment has been made at such time); and

(f) providing cash collateral or letters of credit to the ABL Agent in such amount as reasonably determined by the ABL Agent as is necessary to secure the ABL Secured Parties in respect of asserted or threatened (in writing) claims for which the ABL Secured Parties are entitled to indemnification by any Grantor pursuant to the ABL Security Documents.

"Discharge of Junior Note Priority Obligations" shall mean, except to the extent otherwise provided in Section 2.4(f) and subject to Section 6.17, the occurrence of all of the following:

(a) termination or expiration of all commitments to extend credit that would constitute Junior Note Priority Obligations and, if applicable, Additional Junior Note Obligations;

(b) payment in full in cash of the principal of and interest and premium (if any) on all Junior Note Priority Obligations and, if applicable, Additional Junior Note Obligations;

(c) payment in full in cash of all other Junior Note Priority Obligations and, if applicable, and Additional Junior Note Obligations that are outstanding and unpaid at the time the termination, expiration and discharge set forth in clauses (a) and (b) above have occurred (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other contingent liabilities in respect of which no claim or demand for payment has been made at such time); and

(d) providing cash collateral or letters of credit to the Junior Note Agent (and, if applicable, the Additional Junior Note Obligations Agent) in such amount as reasonably determined by the Junior Note Agent (and, if applicable, the Additional Junior Note Obligations Agent) as is necessary to secure the Junior Note Secured Parties (and, if applicable, the Additional Junior Note Obligations Secured Parties) in respect of asserted or threatened (in writing) claims for which the Junior Note Secured Parties (and, if applicable, the Additional Junior Note Obligations Secured Parties) are entitled to indemnification by any Grantor pursuant to the Junior Note Security Documents or the Additional Junior Note Obligations Documents).

"Discharge of Note Priority Obligations" shall mean the occurrence of both the Discharge of Senior Note Priority Obligations and the Discharge of Junior Note Priority Obligations.

"Discharge of Senior Note Priority Obligations" shall mean, except to the extent otherwise provided in Section 2.4(f) and subject to Section 6.17, the occurrence of all of the following:

(a) termination or expiration of all commitments to extend credit that would constitute Senior Note Priority Obligations and, if applicable, Additional Senior Note Obligations;

(b) payment in full in cash of the principal of and interest and premium (if any) on all Senior Note Priority Obligations and, if applicable, Additional Senior Note Obligations;

(c) payment in full in cash of all other Senior Note Priority Obligations and, if applicable, Additional Senior Note Obligations, that are outstanding and unpaid at the time the termination, expiration and discharge set forth in clauses (a) and (b) above have occurred (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other contingent liabilities in respect of which no claim or demand for payment has been made at such time); and

(d) providing cash collateral or letters of credit to the Senior Note Agent (and, if applicable, Additional Senior Note Obligations Agent) in such amount as reasonably determined by the Senior Note Agent (and, if applicable, Additional Senior Note Obligations Agent) as is necessary to secure the Senior Note Secured Parties (and, if applicable, Additional Senior Note Obligations Secured Parties) in respect of asserted or threatened (in writing) claims for which the Senior Note Secured Parties (and, if applicable, Additional Senior Note Obligations Secured Parties) are entitled to indemnification by any Grantor pursuant to the Senior Note Security Documents and/or and, if applicable, Additional Senior Note Obligations Documents.

"Discharge of Senior Priority Obligations" shall mean, except to the extent otherwise provided in Section 2.4(f) and subject to Section 6.17, (a) with respect to the Senior Note Obligations or the Junior Note Obligations secured by ABL Priority Collateral, the Discharge of ABL Priority Obligations, and (b) with respect to ABL Obligations secured by the Note Priority Collateral, the Discharge of Note Priority Obligations.

"Disposition" shall mean any sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Distribution" shall mean, with respect to any indebtedness or obligation, (a) any direct or indirect payment or distribution by any Borrower or any of its Affiliates of cash, securities or other property, by set-off or otherwise, on account of such indebtedness or obligation, (b) any direct or indirect redemption, purchase or other acquisition of such indebtedness or obligation by any Borrower or any

of its Affiliates (other than assignments and participations (other than to the Borrower or any of its Affiliates) in accordance with the ABL Credit Agreement, the Senior Secured Note Agreement and the Junior Secured Note Agreement, as the case may be), or (c) any direct or indirect acquisition by any Borrower or any of its Affiliates of any equity or other interest in any Person that holds any such indebtedness or obligation.

"Dollar Equivalent" shall mean, with respect to any amount of any currency, as of any applicable date of computation, the Equivalent Amount of such currency converted into Dollars in accordance with the International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto, as in effect from time to time.

"Enforcement Expenses" shall mean all costs, expenses or fees (including fees incurred by any Collateral Agent or any attorneys or other agents or consultants retained by such Collateral Agent) that any Collateral Agent or any other Secured Party may suffer or incur after the occurrence of an Event of Default on account or in connection with (a) the repossession, storage, repair, appraisal, insuring, completion of the manufacture of, preparing for sale, advertising for sale, selling, collecting or otherwise preserving or realizing upon any Collateral, (b) the settlement or satisfaction of any prior Lien or other encumbrance upon any Collateral, (c) the exercise of rights under Section 4, including any amounts payable pursuant to Section 4, (d) the enforcement of any of the ABL Documents, the Senior Note Documents or Junior Note Documents, as the case may be, or the collection of any of the ABL Obligations, the Senior Note Obligations or the Junior Note Obligations, as the case may be, or (e) any Insolvency or Liquidation Proceeding, in each case, in accordance with the ABL Documents, the Senior Note Documents and the Junior Note Documents, as applicable, or applicable law.

"Equivalent Amount" shall mean, at any time, as determined by the applicable Agent (which determination shall be conclusive absent manifest error), with respect to an amount of any currency (the "Reference Currency") which is to be computed as an equivalent amount of another currency (the "Equivalent Currency"), the amount of such Equivalent Currency converted from such Reference Currency at the rate determined by the European Central Bank for such Reference Currency as of 16:00 Central European Time on the second Business Day immediately preceding the event for which such calculation is made.

"Event of Default" shall mean an ABL Default, Senior Note Default or Junior Note Default, as the context may require.

"Excess ABL Debt" shall mean the sum of (a) the portion of the Outstanding ABL Principal Obligations that is in excess of the Maximum ABL Principal Obligations and (b) interest and fees in respect of the Outstanding ABL Principal Obligations in excess of the Maximum ABL Principal Obligations.

"Excess Junior Note Debt" shall mean the sum of (a) the portion of the Outstanding Junior Note Principal Obligations that is in excess of the Maximum Junior Note Principal Obligations and (b) interest and fees in respect of the Outstanding Junior Note Principal Obligations in excess of the Maximum Junior Note Principal Obligations.

"Excess Senior Note Debt" shall mean the sum of (a) the portion of the Outstanding Note Principal Obligations that is in excess of the Maximum Senior Note Principal Obligations and (b) interest and fees in respect of the Outstanding Note Principal Obligations in excess of the Maximum Senior Note Principal Obligations.

"Exercise any Secured Creditor Remedies" or "Exercise of Secured Creditor Remedies" shall mean:

(a) the taking of any action to enforce any Lien in respect of the Collateral, including the institution of any foreclosure proceedings or the noticing of any public or private Disposition pursuant to Article 9 of the UCC, the PPSA, the Bankruptcy Code, similar Bankruptcy Law or other applicable law, or the taking of any action in an attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition,

(b) the exercise of any right or remedy provided to a secured creditor under the ABL Documents, the Senior Note Documents or the Junior Note Documents, under applicable law, at equity, in an Insolvency or Liquidation Proceeding or otherwise, including (i) exercising a right of set-off and (ii) the acceptance of Collateral in full or partial satisfaction of an obligation,

(c) the Disposition of all or any portion of the Collateral, by private or public sale or any other means, in connection with the exercise of enforcement rights relating to the Collateral,

(d) the solicitation of bids from third parties to conduct the Disposition of all or a material portion of the Collateral, in connection with, or in anticipation of, the exercise of enforcement rights relating to the Collateral,

(e) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purpose of valuing, marketing, or Disposing of all or a material portion of the Collateral in connection with, or in anticipation of, the exercise of enforcement rights relating to the Collateral, following the occurrence and during the continuance of an Event of Default,

(f) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any Capital Stock composing a portion of the Collateral) whether under the ABL Documents, the Senior Note Documents, the Junior Note Documents, under applicable law, in equity, in an Insolvency or Liquidation Proceeding or otherwise (including the commencement of applicable legal proceedings or other actions with respect to the Collateral to facilitate the actions described in the preceding clauses), and

(g) the pursuit of ABL Default Dispositions or Senior Note Default Dispositions relative to all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time;

provided, that the following shall not constitute the Exercise any Secured Creditor Remedies or Exercise of Secured Creditor Remedies (and for clarity, shall not be prohibited, restricted or limited in any way by this Agreement): (i) the exercise of cash dominion by the ABL Agent over Deposit Accounts of any Grantor that constitute ABL Priority Collateral and the application of funds in connection therewith against the ABL Priority Obligations pursuant the terms of the ABL Documents, (ii) the imposition of a default interest rate or late fee, (iii) the consent of any Senior Priority Agent in connection with any ABL Default Disposition or Senior Note Default Disposition, as applicable, (iv) the acceleration of (and subject to Section 2.4(d), related collection action on) the ABL Obligations, Senior Note Obligations or Junior Note Obligations, (v) the commencement of any Senior Priority Standstill Period or Third Priority Standstill Period and (vi) any other action permitted pursuant to Section 2.2(e).

"Exigent Circumstances" shall mean (a) an exercise by another creditor of enforcement rights or remedies with respect to all or a material portion of the Collateral or (b) an event or circumstance that materially and imminently threatens the ability of the applicable Secured Party to realize upon all or a material portion of the Collateral, including fraud, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof.

"GAAP" shall mean generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States of America accounting profession).

"Grantors" shall mean the Borrowers and the Guarantors and each of their respective Subsidiaries that have executed and delivered, or may from time to time hereafter execute and deliver, an ABL Security Document, a Senior Note Security Document or a Junior Note Security Document.

"Guarantors" shall mean the collective reference to the ABL Guarantors, the Senior Note Guarantors and the Junior Note Guarantors and their respective successors and assigns; sometimes being referred to herein individually as a "Guarantor".

"Hedge Liabilities" shall mean "Hedge Liabilities", as defined in the ABL Credit Agreement (as in effect on the date hereof or any substantially similar term in any Permitted Refinancing).

"Indebtedness" shall mean, as to any Person, without duplication, (a) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or for the deferred purchase price of property or services, (b) the maximum amount available to be drawn or paid under all letters of credit, bankers' acceptances, bank guaranties and similar obligations issued for the account of such Person and all unpaid drawings and unreimbursed payments in respect of such letters of credit, bankers' acceptances, bank guaranties and similar obligations, (c) all indebtedness of the types described in clause (a), (b), (d), (e), (f) or (g) of this definition secured by any Lien

on any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such indebtedness, such Indebtedness shall be deemed to be in an amount equal to the lesser of the amount thereof or the fair market value of the property to which such Lien relates as determined in good faith by such Person), (d) the aggregate amount of all Capitalized Lease Obligations of such Person, (e) all obligations of such Person to pay a specified purchase price for goods or services, whether or not delivered or accepted, i.e., take-or-pay and similar obligations, (f) all Contingent Obligations of such Person, (g) all obligations, calculated on a basis satisfactory to the Secured Parties and in accordance with accepted practice, under any Bank Product Agreement or under any similar type of agreement and (h) obligations arising under any off-balance sheet liability retained in connection with asset securitization programs, synthetic leases, sale and leaseback transactions or other similar obligations arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the consolidated balance sheet of such Person and its Subsidiaries.

"Indemnity Amount" shall mean, on any date, the amount required to be paid by any Grantor to any Collateral Agent or any other Secured Party on such date pursuant to any indemnity provision contained in the ABL Documents, the Senior Note Documents or the Junior Note Documents, as the case may be.

"Insolvency or Liquidation Proceeding" shall mean any of the following: (a) the filing by any Grantor of a voluntary petition in bankruptcy under any provision of any Bankruptcy Law (including the Bankruptcy Code, CCAA or BIA) or a petition to take advantage of any receivership or insolvency laws, including any petition seeking the dissolution, winding up, total or partial liquidation, reorganization, composition, arrangement, adjustment or readjustment or other relief of such Grantor, such Grantor's debts or such Grantor's assets or the appointment of a trustee, receiver, liquidator, custodian or similar official for such Grantor or a material part of such Grantor's property; (b) the appointment of a receiver, liquidator, trustee, custodian or other similar official for such Grantor or all or a material part of such Grantor's assets; (c) the filing of any petition against such Grantor under any bankruptcy law (including the Bankruptcy Code) or other receivership or insolvency law, including any petition seeking the dissolution, winding up, total or partial liquidation, reorganization, composition, arrangement, adjustment or readjustment or other relief of such Grantor, such Grantor's debts or such Grantor's assets or the appointment of a trustee, receiver, liquidator, custodian or similar official for such Grantor or a material part of such Grantor's property; or (d) the general assignment by such Grantor for the benefit of creditors or any other marshaling of the assets and liabilities of such Grantor.

"Intellectual Property" shall mean, with respect to any Person, the collective reference to such Person's patents, patent applications, trademarks, service marks, trade names, trade secrets, goodwill and copyrights, Proprietary Rights, together with all licenses of the same, in each case, whether written, electronic or oral.

"Intercreditor Agreement Consent" shall mean an agreement substantially in the form of Exhibit B.

"Intercreditor Agreement Joinder" shall mean an agreement substantially in the form of Exhibit A.

"Junior 507(b) Claims" has the meaning set forth in Section 2.5(c)(iv).

"Junior Note Agent" shall have the meaning assigned to that term in the introduction to this Agreement and shall include (a) any successor thereto as well as any Person designated as the "Agent", the "Administrative Agent" or the "Collateral Agent" under any Junior Secured Note Agreement and includes any New Junior Priority Agent that becomes the new Junior Note Agent to the extent set forth in Section 2.4(g) and (b) any Additional Junior Note Obligations Agent.

"Junior Secured Note Agreement" shall have the meaning set forth in the recitals hereto.

"Junior Note Default" shall mean any **["Event of Default"]**, as defined in any Junior Note Document.

"Junior Note Documents" shall mean (a) the Junior Secured Note Agreement and the other **[Note Documents]** (as defined in the Junior Secured Note Agreement), including the Junior Note Security Documents, (b) each of the other agreements, documents and instruments providing for or evidencing any Junior Note Obligation (including any Permitted Refinancing of any Junior Note Obligation), and any other document or instrument executed or delivered at any time in connection with any Junior Note Obligation (including any Permitted Refinancing of any Junior Note Obligation), together with any amendments, replacements, modifications, extensions, renewals or supplements to, or restatements of, any of the foregoing and (c) the the Additional Junior Note Obligations Agreements.

"Junior Note Holders" shall have the meaning set forth in the recitals hereto.

"Junior Note Obligations" shall mean (a) all **[Obligations]** (as defined in the Junior Secured Note Agreement), and all other amounts owing, due, or secured under the terms of the Junior Secured Note Agreement or any other Junior Note Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys' fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, indemnities or guarantees, and all other amounts payable under or secured by any Junior Note Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency or Liquidation Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the Junior Note Documents but for the commencement of the Insolvency or Liquidation Proceeding), in each case, whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, including all Enforcement Expenses and Indemnity Amounts and (b) all Additional Junior Note Obligations.

"Junior Note Permitted Liens" shall mean the **["Permitted Liens"]** under, and as defined in, the Junior Secured Note Agreement as in effect on the date hereof and as amended in accordance with the terms of this Agreement.

"Junior Note Permitted Priority Liens" shall mean the **["Permitted Liens"]** under, and as defined in, the Junior Secured Note Agreement as in effect on the date hereof and as amended in accordance with the terms of this Agreement (or substantially similar term in any Permitted Refinancing) that are, pursuant to the terms thereof, permitted to have priority over the Liens securing the Junior Note Priority Obligations.

"Junior Note Pledge Agreement" shall mean the **["Pledge Agreement"]** (as defined in the Junior Secured Note Agreement).

"Junior Note Priority Obligations" shall mean all Junior Note Obligations other than Excess Junior Note Debt.

"Junior Note Secured Parties" shall mean (a) the Junior Note Holders and the Junior Note Agent and shall include all former Junior Note Holders and agents under the Junior Secured Note Agreement to the extent that any Junior Note Obligations owing to such Persons were incurred while such Persons were Junior Note Holders or agents under the Junior Secured Note Agreement and such Junior Note Obligations have not been paid or satisfied in full and all new Junior Note Secured Parties to the extent set forth in Section 2.4(g) and (b) the Additional Junior Note Obligations Secured Parties.

"Junior Note Security Agreement" shall mean the **["Security Agreement"]** (as defined in the Junior Secured Note Agreement).

"Junior Note Security Document" shall mean (a) the Junior Note Security Agreement, the Junior Note Pledge Agreement and any **["Mortgage"]** (as defined in the Junior Secured Note Agreement) or related security document executed and delivered by any Borrower or any other Grantor in connection therewith and (b) any other agreement, document or instrument pursuant to which a Lien is granted by any Borrower or any other Grantor securing any Junior Note Obligations (including any Permitted Refinancing of any Junior Note Obligations) or under which rights or remedies with respect to such Liens are governed, together with any amendments, replacements, modifications, extensions, renewals or supplements to, or restatements of, any of the foregoing, to the extent permitted hereby.

"Junior Priority" shall mean, (a) prior to the discharge of ABL Priority Obligations, with respect to the ABL Priority Collateral, that such Liens purported to be created on such Collateral to secure the Note Priority Obligations pursuant to the Note Security Documents are prior in right to any other Lien thereon, other than (A) the Liens on such ABL Priority Collateral securing the ABL Priority Obligations, and (B) Senior Note Permitted Priority Liens and Junior Note Permitted Priority Liens, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, that such Liens purported to be created on such Collateral to secure

the ABL Priority Obligations under the ABL Security Documents are prior in right to any other Lien thereon, other than (A) the Liens on such Note Priority Collateral securing the Note Priority Obligations, and (B) ABL Permitted Priority Liens.

"Junior Priority Agent" shall mean, (a) with respect to the ABL Priority Collateral, (i) prior to the Discharge of ABL Priority Obligations, the Note Agents, and (ii) after the Discharge of Note Priority Obligations, the ABL Agent, and (b) with respect to the Note Priority Collateral, the ABL Agent.

"Junior Priority Collateral" shall mean, (a) with respect to the ABL Priority Obligations, all Collateral other than ABL Priority Collateral, and (b) with respect to the Note Priority Obligations, all Collateral other than Note Priority Collateral.

"Junior Priority Credit Agreement" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the Secured Note Agreements, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the ABL Credit Agreement.

"Junior Priority Creditors" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the Note Holders, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the ABL Lenders.

"Junior Priority Documents" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the Note Documents, and (b) with respect to the Note Priority Obligations, prior to the Discharge of Note Priority Obligations, the ABL Documents.

"Junior Priority Permitted Liens" shall mean, (a) with respect to the ABL Priority Collateral, the Senior Note Permitted Liens and the Junior Note Permitted Liens, and (b) with respect to the Note Priority Collateral, the ABL Permitted Liens.

"Junior Priority Obligations" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the Note Priority Obligations, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the ABL Priority Obligations.

"Junior Priority Secured Parties" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the Note Secured Parties, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the ABL Secured Parties.

"Lender-Provided Foreign Currency Hedge" shall mean "Lender-Provided Foreign Currency Hedge", as defined in the ABL Credit Agreement (as in effect on the date hereof or any substantially similar term in any Permitted Refinancing).

"Lender-Provided Interest Rate Hedge" shall mean "Lender-Provided Interest Rate Hedge", as defined in the ABL Credit Agreement (as in effect on the date hereof or any substantially similar term in any Permitted Refinancing).

"License Period" shall have the meaning set forth in Section 4.2(b).

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, hypothec, charge, lien (statutory or other), charge, preference, priority or other security agreement of any kind or nature whatsoever (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC, or any similar recording or notice statute or other law, and any lease having substantially the same effect as the foregoing).

"Maximum ABL Principal Obligations" shall mean, as of any date of determination, the sum of:

(a) $_____ [2]

plus

(b) 110% of the amount of any incremental ABL Obligations authorized to be incurred pursuant to **[Section __]** of the ABL Credit Agreement (as in effect on the date hereof or any substantially similar provision under any Permitted Refinancing),

plus

(c) the amount of Bank Product Obligations,

plus

(d) if applicable, the amount of any incremental DIP Financing permitted pursuant to Section 2.5(a), in an aggregate principal amount under this clause (c) not to exceed the sum of $**[TBD]** [3] minus the Outstanding ABL Principal Obligations as of the commencement of such Insolvency or Liquidation Proceeding in excess of the commitments (including incremental commitments) under the ABL Credit Agreement (or any Permitted Refinancing) as of the date hereof and otherwise permitted under clauses (a) and (b) above;

minus

(e) the amount of all payments of Outstanding ABL Principal Obligations under the ABL Credit Agreement that result in a permanent reduction of the revolving credit commitments under the ABL Credit Agreement (other than payments of Outstanding ABL Principal Obligations in connection with a Permitted Refinancing thereof or a refinancing pursuant to a DIP Financing permitted pursuant to Section 2.5(a)).

Any net increase in the aggregate principal amount of a loan or letter of credit (on a Dollar Equivalent (as defined under the ABL Credit Agreement) basis) after the loan is made, the letter of credit issued, or Bank Product Obligation incurred that is caused by a fluctuation in the exchange rate of the currency in which the loan, letter of credit or Bank Product Obligation is denominated will be ignored in determining whether the Maximum ABL Principal Obligations has been exceeded.

"Maximum Junior Note Principal Obligations" shall mean, as of any date of determination:

(a) the amount that is the sum of:

(i) $[_____][4];

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[2] TBD. 115% of ABL commitments at close.

[3] TBD. An amount equal to 15% of the closing commitments plus the incremental commitments if funded.

[4] TBD. 15% above closing amount.

plus

(ii) [100% of the amount of any incremental Junior Note Obligations authorized to be incurred pursuant to the Junior Note Agreement (as in effect on the date hereof or any substantially similar provision under any Permitted Refinancing),][5]

plus

(iii) if applicable, the amount of any incremental DIP Financing permitted pursuant to Section 2.5(a),

minus

(b) the amount of all payments of Outstanding Junior Note Principal Obligations under the Junior Secured Note Agreement (other than payments of Outstanding Junior Note Principal Obligations in connection with a Permitted Refinancing thereof).

Any net increase in the aggregate principal amount of a loan (on a Dollar Equivalent basis) after the loan is made that is caused by a fluctuation in the exchange rate of the currency in which the loan is denominated will be ignored in determining whether the Maximum Junior Note Principal Obligations.

"Maximum Senior Note Principal Obligations" shall mean, as of any date of determination:

(a) the amount that is the sum of:

(iv) $[_____][6];

plus

(v) [100% of the amount of any incremental Senior Note Obligations authorized to be incurred pursuant to the Senior Note Agreement (as in effect on the date hereof or any substantially similar provision under any Permitted Refinancing),][7]

plus

(vi) if applicable, the amount of any incremental DIP Financing permitted pursuant to Section 2.5(a);

minus

(b) the amount of all payments of Outstanding Note Principal Obligations under the Senior Secured Note Agreement (other than payments of Outstanding Note Principal Obligations in connection with a Permitted Refinancing thereof or a refinancing pursuant to a DIP Financing permitted pursuant to Section 2.5(a)).

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[5] To be confirmed whether any incremental junior notes provision.

[6] TBD. 15% above closing amount,

[7] To be confirmed whether any incremental senior notes provision.

Any net increase in the aggregate principal amount of a loan (on a Dollar Equivalent basis) after the loan is made that is caused by a fluctuation in the exchange rate of the currency in which the loan is denominated will be ignored in determining whether the Maximum Senior Note Principal Obligations.

"New Junior Priority Agent" shall have the meaning set forth in Section 2.4(g).

"New Senior Priority Agent" shall have the meaning set forth in Section 2.4(f).

“Note Agents” shall mean the Senior Note Agent and the Junior Note Agent.

"Note Cash Proceeds Notice" shall mean a written notice delivered by the Senior Note Agent, Junior Note Agent, or any Grantor to the ABL Agent (a) stating either that a Disposition of Note Priority Collateral is being effected or that an Event of Default has occurred and is continuing under the applicable Notes Document and (b) stating that certain cash proceeds which may be deposited in any Grantor's deposit account, collection account or other account constitute Note Priority Collateral and reasonably identifying the amount of such proceeds.

"Note DIP Financing" shall mean any DIP Financing provided by or consented to by any Note Agent or any other Note Holder.

"Note Documents" shall mean the Senior Note Documents and the Junior Note Documents.

"Note Holders" shall mean the Senior Note Holders and the Junior Note Holders.

"Notes Intercreditor Agreement" shall mean that certain intercreditor agreement, dated as of [_____], among [_____], as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Note Priority Collateral" shall mean all of the following assets that constitute Collateral, whether now owned or hereafter acquired (including any of the following assets acquired or created after the commencement of any Insolvency or Liquidation Proceeding) and wherever located (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law), would constitute Note Priority Collateral):

(a) all Equipment and all real property and interests therein (including both fee and leasehold interests) and all Fixtures;

(b) all Intellectual Property (subject to the rights of the ABL Agent under Section 4.2 and excluding any interest in any ABL Priority Collateral that is or becomes branded or is produced through the use or other application of any Intellectual Property and other than any computer programs and any support and information relating thereto that constitute Inventory);

(c) all Capital Stock and other Investment Property (other than Investment Property constituting ABL Priority Collateral);

(d) except to the extent constituting ABL Priority Collateral, all other Instruments, Documents and other General Intangibles;

(e) except to the extent constituting ABL Priority Collateral, all other Commercial Tort Claims;

(f) all other Collateral not constituting ABL Priority Collateral;

(f) all insurance policies relating to the foregoing Note Priority Collateral (regardless of whether the Senior Note Agent or Junior Note Agent is the loss payee thereof), excluding business interruption insurance and proceeds thereof and credit insurance with respect to any Accounts;

(g) all collateral and guarantees given by any other Person with respect to any of the foregoing Note Priority Collateral;

(h) all Supporting Obligations (including Letter-of-Credit Rights) and all Proceeds of any of the foregoing Note Priority Collateral and all "adequate protection" payments (or similar payments under applicable Bankruptcy Law) made using any of the foregoing included in clauses (a) through this clause (h) in respect of Senior Note Obligations or Junior Note Obligations in any Insolvency or Liquidation Proceeding (other than adequate protection payments made with ABL Priority Collateral or proceeds of any ABL DIP Financing); and

(i) except to the extent constituting ABL Priority Collateral, all other books and Records, in each case, to the extent evidencing or relating to any of the foregoing.

Notwithstanding the foregoing, the term "Note Priority Collateral" shall not include any ABL Priority Collateral.

"Note Priority Obligations" shall mean the Senior Note Priority Obligations and the Junior Note Priority Obligations.

"Note Secured Parties" shall mean the Senior Note Secured Parties and the Junior Note Secured Parties.

"Note Security Documents" shall mean the Senior Note Security Documents and the Junior Note Security Documents.

"Outstanding ABL Principal Obligations" shall mean the sum of (a) the aggregate outstanding principal amount of all loans and advances (including ABL Agent Advances other than ABL Agent Advances made to enable the payment of Enforcement Expenses), (b) the undrawn amount available under all outstanding letters of credit, (c) all Bank Product Obligations and other financial accommodations, in each case, made, issued or incurred under the ABL Documents, and (d) the amount of all interest, fees, costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the ABL Obligations (other than Excess ABL Debt) as and when the same is added to the principal amount of the ABL Obligations and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding).

"Outstanding Junior Note Principal Obligations" shall mean the aggregate outstanding principal amount of all loans and other financial accommodations made, issued or incurred under the Junior Note Documents (excluding protective advances made to enable the payment of Enforcement Expenses).

"Outstanding Note Principal Obligations" shall mean the aggregate outstanding principal amount of all loans and other financial accommodations made, issued or incurred under the Senior Note Documents (excluding protective advances made to enable the payment of Enforcement Expenses).

"Permitted Refinancing" shall mean, as to any Indebtedness, the Refinancing of such Indebtedness ("Refinancing Indebtedness") to refinance such existing Indebtedness; provided, that, the terms applicable to such Refinancing Indebtedness and, if applicable, the related guarantees of such Refinancing Indebtedness, shall not violate the applicable requirements contained in this Agreement.

"Person" shall mean any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"Pledged Senior Priority Collateral" shall have the meaning set forth in Section 2.4(e)(i).

"Pledged Stock" shall mean all shares of Capital Stock owned by a Grantor, and the certificates, if any, representing such shares and any interest of a Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

"PPSA" means the Personal Property Security Act (Ontario), or any other applicable Canadian federal or provincial statute pertaining to the granting, perfecting, priority or ranking of security interests, liens, hypothecs or personal property (including the *Civil Code of Quebec*), and any successor statutes, together with any regulations thereunder, in each case as in effect from time to time.

"Proceeds" shall mean all "proceeds" as defined in Article 9 of the UCC as in effect in the state of New York and, in any event, shall also include (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Collateral Agent or any Grantor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to any Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority) and (c) any and all other amounts or assets from time to time paid or payable on account of, under or in connection with any of the Collateral.

"Proprietary Rights" shall mean, with respect to a Person, all of such Person's now owned and hereafter arising or acquired licenses, franchises, customer lists, permits, patents, patent rights, copyrights, works which are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses and rights related to any of the foregoing, including those registered patents and trademarks set forth on schedules to the ABL Credit Agreement, the

Senior Note Security Agreement and the Junior Note Security Agreement, and all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing, and all rights to sue for past, present, and future infringement of any of the foregoing.

"Recovery" shall have the meaning set forth in Section 6.17.

"Refinance" shall mean, in respect of any Indebtedness, to refinance, extend, renew, retire, defease, amend, modify, supplement, restructure, replace, refund, restate or repay, or to issue other Indebtedness, in exchange or replacement for, such Indebtedness in whole or in part, including with new or different lenders or whether adding new or additional Secured Parties. "Refinanced" and "Refinancing" shall have correlative meanings.

"Secured Note Agreements" means the Senior Secured Note Agreement and the Junior Secured Note Agreement.

"Secured Parties" shall mean the ABL Secured Parties, the Senior Note Secured Parties and the Junior Secured Parties.

"Senior 507(b) Claims" has the meaning set forth in Section 2.5(c)(iv).

"Senior Note Agent" shall have the meaning assigned to that term in the introduction to this Agreement and shall include (a) any successor thereto as well as any Person designated as the "Agent", the "Administrative Agent" or the "Collateral Agent" under any Senior Secured Note Agreement and includes any New Senior Priority Agent that becomes the new Senior Note Agent to the extent set forth in Section 2.4(f) and (b) any Additional Senior Note Obligations Agent.

"Senior Note Default" shall mean any **["Event of Default"]**, as defined in any Senior Note Document.

"Senior Note Default Dispositions" shall have the meaning set forth in Section 2.4(a)(ii).

"Senior Note Documents" shall mean (a) the Senior Secured Note Agreement and the other **[Note Documents]** (as defined in the Senior Secured Note Agreement), including the Senior Note Security Documents, (b) each of the other agreements, documents and instruments providing for or evidencing any Senior Note Obligation (including any Permitted Refinancing of any Senior Note Obligations), and any other document or instrument executed or delivered at any time in connection with any Senior Note Obligation (including any Permitted Refinancing of any Senior Note Obligation), together with any amendments, replacements, modifications, extensions, renewals or supplements to, or restatements of, any of the foregoing and (c) any Additional Senior Note Obligations Agreement.

"Senior Note Obligations" shall mean (a) all **[Obligations]** (as defined in the Senior Secured Note Agreement), and all other amounts owing, due, or secured under the terms of the Senior Secured Note Agreement or any other Senior Note Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys' fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, indemnities or guarantees, and all other amounts payable under or secured by any Senior Note Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency or Liquidation Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the Senior Note Documents but for the effect of the Insolvency or Liquidation Proceeding), in each case, whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, including all Enforcement Expenses and Indemnity Amounts and (b) all Additional Senior Note Obligations. For the avoidance of doubt, the foregoing shall constitute "Senior Note Obligations" notwithstanding any limitations on, restrictions of, or agreements by, Grantors in the ABL Documents with respect to the incurrence of any Senior Note Obligations.

"Senior Note Holders" shall have the meaning set forth in the recitals hereto.

"Senior Note Permitted Liens" shall mean the **["Permitted Liens"]** under, and as defined in, the Senior Secured Note Agreement as in effect on the date hereof and as amended in accordance with the terms of this Agreement.

"Senior Note Permitted Priority Liens" shall mean the **["Permitted Liens"]** under, and as defined in, the Senior Secured Note Agreement as in effect on the date hereof and as amended in accordance with the terms of this Agreement (or substantially similar term

in any Permitted Refinancing) that are, pursuant to the terms thereof, permitted to have priority over the Liens securing the Senior Note Priority Obligations.

"Senior Note Pledge Agreement" shall mean the **["Pledge Agreement"]** (as defined in the Senior Secured Note Agreement).

"Senior Note Priority Obligations" shall mean all Senior Note Obligations other than Excess Senior Note Debt.

"Senior Note Secured Parties" shall mean (a) the Senior Note Holders and the Senior Note Agent and shall include all former Senior Note Holders and agents under the Senior Secured Note Agreement to the extent that any Senior Note Obligations owing to such Persons were incurred while such Persons were Senior Note Holders or agents under the Senior Secured Note Agreement and such Senior Note Obligations have not been paid or satisfied in full and all new Senior Note Secured Parties to the extent set forth in Section 2.4(f) and (b) the Additional Senior Note Obligations Secured Parties.

"Senior Note Security Agreement" shall mean the **["Security Agreement"]** (as defined in the Senior Secured Note Agreement).

"Senior Note Security Document" shall mean (a) the Senior Note Security Agreement, the Senior Note Pledge Agreement and any **["Mortgage"]** (as defined in the Senior Secured Note Agreement) or related security document executed and delivered by the Borrower or any other Grantor in connection therewith and (b) any other agreement, document or instrument pursuant to which a Lien is granted by one or more of the Borrower or any other Grantor securing any Senior Note Obligations (including any Permitted Refinancing of any Senior Note Obligations) or under which rights or remedies with respect to such Liens are governed, together with any amendments, replacements, modifications, extensions, renewals or supplements to, or restatements of, any of the foregoing, to the extent permitted hereby.

"Senior Priority" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, that such Lien purported to be created on any ABL Priority Collateral to secure the ABL Priority Obligations pursuant to any ABL Security Document is prior in right to any other Lien thereon (other than any ABL Permitted Priority Liens applicable to such ABL Priority Collateral), and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, that such Lien purported to be created on any Note Priority Collateral to secure the Note Priority Obligations pursuant to any Note Security Document is prior in right to any other Lien thereon (other than any Senior Note Permitted Priority Liens or Junior Note Permitted Priority Liens applicable to such Note Priority Collateral).

"Senior Priority Agent" shall mean, (a) with respect to the ABL Priority Collateral, prior to the discharge of ABL Priority Obligations, the ABL Agent, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the Note Agents.

"Senior Priority Cash Collateral" shall have the meaning set forth in Section 2.5(a).

"Senior Priority Collateral" shall mean, (a) with respect to the ABL Priority Obligations, all ABL Priority Collateral and (b) with respect to the Note Priority Obligations, all Note Priority Collateral.

"Senior Priority Credit Agreement" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the ABL Credit Agreement, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the Senior Secured Note Agreement and the Junior Secured Note Agreement.

"Senior Priority DIP Financing" shall have the meaning set forth in Section 2.5(a).

"Senior Priority Documents" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the ABL Documents, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the Note Documents.

"Senior Priority Lenders" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the ABL Lenders, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the Note Holders.

"Senior Priority Obligations" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the ABL Priority Obligations, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the Note Priority Obligations.

"Senior Priority Secured Parties" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the ABL Secured Parties, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the Note Secured Parties.

"Senior Priority Security Documents" shall mean, (a) with respect to the ABL Priority Collateral, prior to the Discharge of ABL Priority Obligations, the ABL Security Documents, and (b) with respect to the Note Priority Collateral, prior to the Discharge of Note Priority Obligations, the Note Security Documents.

"Senior Secured Note Agreement" shall have the meaning set forth in the recitals hereto.

"Subsidiary" shall mean, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, that, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"Third Party Purchaser" shall have the meaning set forth in Section 4.3.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the relevant jurisdiction.

"United States" shall mean the United States of America.

"Unrestricted" shall mean, when referring to cash or cash equivalents of a Grantor or any Subsidiary, any such cash or cash equivalents that is not reserved for a specific purpose and therefore is available for immediate or general business use.

1.3. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified in accordance with the terms hereof, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement, (d) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (f) any terms defined in the UCC but not otherwise defined herein shall have the same meanings herein as are assigned thereto in the UCC, (g) reference to any law shall mean such law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect on the date hereof, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder, (h) references to Sections or clauses shall refer to those portions of this Agreement, and any references to a clause shall, unless otherwise identified, refer to the appropriate clause within the same Section in which such reference occurs, (i) any definition of, or reference to, ABL Priority Collateral or Note Priority Collateral herein shall not be construed as referring to any amounts recovered by a Grantor, as a debtor in possession, or a trustee for the estate of a Grantor, under Section 506(c) of the Bankruptcy Code (or by comparable Persons under any other comparable Bankruptcy Law); and (j) in this Agreement, the term "UCC" shall also refer to analogous personal property security legislation in foreign jurisdictions, *mutatis mutandis*, and, where the context so requires, any term defined herein by reference to the UCC as applicable, shall also have any extended, alternative or analogous meaning given to such term in such foreign personal property security legislation.

1.4. Notes Intercreditor Agreement. Notwithstanding anything to the contrary in this Agreement, the rights and obligations of the Junior Note Secured Parties, on the one hand, and the Senior Note Secured Parties, on the other hand, with respect to the Collateral shall be governed by and subject to the terms of the Notes Intercreditor Agreement. In the event of a conflict between the terms of this Agreement and the Notes Intercreditor Agreement with respect to any matter pertaining solely to the respective rights or obligations of the Junior Note Secured Parties, on the one hand, and the Senior Note Secured Parties, on the other hand, then the Notes Intercreditor Agreement shall prevail.

Section 2. Collateral; Priorities; Payment Restrictions.

2.1. Lien Priorities; Payment Restrictions.

(a) Relative Priorities. Notwithstanding (i) the time, manner, order or method of grant, creation, attachment, validity, enforceability or perfection of any Liens in the Collateral securing the ABL Obligations, the Senior Note Obligations or the Junior Note Obligations, (ii) the date on which any ABL Obligations, any Senior Note Obligations or any Junior Note Obligations are extended, (iii) any provision of the UCC, the PPSA or any other applicable law, including any rule for determining priority thereunder or under any other law or rule governing the relative priorities of secured creditors, including with respect to real property or fixtures, (iv) any provision set forth in any ABL Document, any Senior Note Document or any Junior Note Document (other than this Agreement), or (v) the possession or control by any Collateral Agent or any Secured Party or any bailee of all or any part of any Collateral as of the date hereof or otherwise, each Collateral Agent, on behalf of itself and its respective other Secured Parties, hereby agrees that:

(i) any Lien with respect to the ABL Priority Collateral securing any ABL Priority Obligations now or hereafter held by or on behalf of the ABL Agent or any other ABL Secured Parties or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation, or otherwise, shall be senior in all respects and prior to any Liens with respect to the ABL Priority Collateral securing (A) any Senior Note Obligations, (B) any Junior Note Obligations and (C) any Excess ABL Debt;

(ii) any Lien with respect to the ABL Priority Collateral securing any Note Priority Obligations now or hereafter held by or on behalf of the Note Agents or any other Note Secured Parties or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Priority Obligations and (B) senior in all respects and prior to any Liens with respect to the ABL Priority Collateral securing (1) any Excess ABL Debt, (2) any Excess Senior Note Debt and (3) any Excess Junior Note Debt;

(iii) any Lien with respect to the Note Priority Collateral securing any Note Priority Obligations now or hereafter held by or on behalf of the Note Agents or any other Note Secured Parties or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Liens on the Note Priority Collateral securing (A) any ABL Obligations, (B) any Excess Senior Note Debt and (C) any Excess Junior Note Debt;

(iv) any Lien with respect to the Note Priority Collateral securing any ABL Priority Obligations now or hereafter held by or on behalf of the ABL Agent or any other ABL Secured Parties or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to any Liens on the Note Priority Collateral securing any Note Priority Obligations and (B) senior in all respects and prior to any Lien on the Note Priority Collateral securing (1) any Excess ABL Obligations, (2) any Excess Senior Note Debt and (3) any Excess Junior Note Debt.

Notwithstanding anything to the contrary in this Agreement, the priorities of any Liens on the Note Priority Collateral securing the Senior Note Obligations and the Junior Note Obligations, as between them, shall be governed by and subject to the Notes Intercreditor Agreement.

The priorities of the Liens provided in this Section 2.1(a) shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement, replacement, refunding or refinancing of the ABL Documents and/or the ABL Obligations,

the Senior Note Documents and/or the Senior Note Obligations, or the Junior Note Documents and/or the Junior Note Obligations, nor by any action or inaction which any ABL Secured Party, Senior Note Secured Party and/or Junior Note Secured Party may take or fail to take in respect of the Collateral. Notwithstanding any failure by any Collateral Agent to perfect its security interests in the Collateral or any avoidance, invalidation or subordination by any third party or court of competent jurisdiction of the security interests in the Collateral granted to such Collateral Agent, the priority and rights as between the Liens of the ABL Agent, the Liens of the Senior Note Agent, and the Liens of the Junior Note Agent shall be as set forth herein.

(b) Prohibition on Contesting Liens. Each Collateral Agent, for itself and each of its respective Secured Parties, agrees that neither it nor any Secured Party will (and hereby waives any right to), directly or indirectly, contest, or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, attachment, perfection, priority, or enforceability of a Lien held by or on behalf of any of the other Collateral Agents or the Secured Parties in the Collateral (or the validity, allowability, or enforceability of any Senior Priority Obligations or Junior Priority Obligations secured thereby or purported to be secured thereby), as the case may be, or the provisions of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of any Collateral Agent to enforce the terms of this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the Senior Priority Obligations and the Junior Priority Obligations as provided in Sections 2.1(a) and 2.2.

(c) No New Liens. So long as the Discharge of Senior Priority Obligations has not occurred, the parties hereto agree that the Borrower or any other Grantor shall not grant or permit any Liens in favor of any Junior Priority Agent or any Junior Priority Creditor on any asset or property of any Grantor to secure any Junior Priority Obligation, except for those created by the Junior Priority Security Documents as in effect on the date hereof, unless it has granted or substantially contemporaneously grants (or has offered to grant) a Lien therein in favor of the Senior Priority Agent, and once granted, such Lien shall have the priority as set forth in Section 2.1(a). To the extent that the provisions of the immediately preceding sentence are not complied with for any reason, without limiting any other rights and remedies available to the Senior Priority Agent and/or the other Senior Priority Secured Parties, the Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens on the Senior Priority Collateral granted in violation of Sections 2.1(a) – (c) shall be subject to Section 2.3.[8]

2.2. Exercise of Remedies.

(a) So long as the Discharge of Senior Priority Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against one or more Grantors:

(i) Neither any Junior Priority Agent nor any of the other Junior Priority Secured Parties:

(x) will Exercise any Secured Creditor Remedies with respect to any Senior Priority Collateral; provided, however, that:

(1) with respect to the ABL Priority Collateral, the Controlling Note Agent may exercise any or all such rights after the passage of a period of one hundred fifty (150) days from the date of delivery of a notice (which notice shall identify itself as a "standstill period notice") in writing to the ABL Agent of the occurrence and continuation of a Senior Note Default in respect of the Senior Note Obligations or the acceleration of the Senior Note Obligations or a Junior Note Default in respect of the Junior Note Obligations or the acceleration of the Junior Note Obligations, as applicable (and as specified in the applicable standstill period notice) (such 150-day period, the "ABL Priority Collateral Standstill Period"); and

[8] To be confirmed that all of the assets of the US group are to be pledged to both ABL and Notes (i.e., no assets carved out for the benefit of the Notes only).

(2) with respect to the Note Priority Collateral, the ABL Agent may exercise any or all such rights after the passage of one hundred fifty (150) days from the date of delivery of a notice (which notice shall identify itself as a "standstill period notice") in writing to the Senior Note Agent and the Junior Note Agent of the occurrence and continuation of an ABL Default in respect of the ABL Obligations or the acceleration of the ABL Obligations (such 150-day period, the "Note Priority Collateral Standstill Period" (together with the ABL Priority Collateral Standstill Period, the "Standstill Period").

The Exercise of Secured Creditor Remedies with respect to the Collateral, as between the Senior Note Secured Parties and the Junior Note Secured Parties, shall be governed by, and subject to, the Notes Intercreditor Agreement.

Notwithstanding anything herein to the contrary, (i) neither the Junior Priority Agent nor any other Junior Priority Secured Party will Exercise any Secured Creditor Remedies with respect to any Senior Priority Collateral if, (x) notwithstanding the expiration of the Standstill Period, the Senior Priority Agent or the other Senior Priority Secured Parties shall have commenced the Exercise of Secured Creditor Remedies with respect to all or any material portion of the Senior Priority Collateral (prompt notice of such exercise to be given to the Junior Priority Agent(s) by the Senior Priority Agent; provided, that the applicable Senior Priority Agent shall have no liability for failing to do so) and are diligently pursuing in good faith the exercise thereof, (y) the Senior Priority Agent or the other Senior Priority Secured Parties are diligently attempting in good faith to vacate any stay of enforcement of their Senior Liens, or (z) if the applicable default and acceleration (with respect to the Senior Priority Obligations) has been rescinded and (ii) the foregoing time periods shall be tolled if the Senior Priority Agent and the Junior Priority Agent are effectively stayed from enforcing their rights and remedies with respect to the Senior Priority Collateral;

(y) will contest, protest or object to any foreclosure proceeding or action brought by the Senior Priority Agent or any other Senior Priority Secured Party with respect to, or any other Exercise of Secured Creditor Remedies by the Senior Priority Agent or any other Senior Priority Secured Party relating to the Senior Priority Collateral under the Senior Priority Documents or otherwise; and

(z) subject to its rights under clause (i)(x) above, will object to the forbearance by the Senior Priority Agent or the other Senior Priority Secured Parties from bringing or pursuing any foreclosure proceeding or action or any other Exercise of Secured Creditor Remedies relating to the Senior Priority Collateral;

in each case of clauses (x), (y) and (z) above, the respective interests of the Junior Priority Secured Parties shall attach to the unapplied Proceeds thereof subject to the relative priorities described in Section 2.1 and such Proceeds shall be applied in accordance with Sections 5.1 and 5.2 to the ABL Priority Obligations, the Senior Note Priority Obligations and the Junior Note Priority Obligations, as applicable.

(ii) Subject to Section 2.2(a)(i) above and Section 2.2(a)(iii) below, the Senior Priority Agent and the other Senior Priority Secured Parties shall have the exclusive right to Exercise any Secured Creditor Remedies and, in connection therewith, make determinations regarding the Disposition of, or restrictions with respect to, the Senior Priority Collateral without any consultation with or the consent of the Junior Priority Agent or any other Junior Priority Secured Party.

(iii) Notwithstanding the foregoing provisions of this Section 2.2(a) to the contrary:

(A) the Junior Priority Agent may take any action (not adverse to the prior Liens on the Senior Priority Collateral securing the Senior Priority Obligations, or the rights of the Senior Priority Agent or any other Senior Priority Secured Parties to Exercise any Secured Creditor Remedies in respect thereof) in order to preserve or protect its Lien on the Senior Priority Collateral in accordance with applicable law and in a manner not in violation of the terms of this Agreement (including any of the provisions of Section 2.5);

(B) the Junior Priority Secured Parties shall be entitled to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Junior Priority Secured Parties, including any claims secured by the Senior Priority Collateral, if any, in each case, in a manner not in violation of the terms of this Agreement (including any of the provisions of Section 2.5);

(C) the Junior Priority Secured Parties shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either the Bankruptcy Law or applicable non-bankruptcy law and do not assert rights available solely to the holders of secured claims, in each case, not in violation of Sections 2.1, 2.2, 2.5, 5.1 or 5.2;

(D) the Junior Priority Secured Parties shall be entitled to file any proof of claim in an Insolvency or Liquidation Proceeding and vote on any plan of reorganization, and make any arguments and motions in connection with such plan, in each case, not in violation of Sections 2.1, 5.1 or 5.2; and

(E) the Junior Priority Agent or any other Junior Priority Secured Party may Exercise any Secured Creditor Remedies with respect to the Senior Priority Collateral after the termination of the applicable Standstill Period, to the extent not prohibited by clause (i)(x) above.

In connection with the Exercise of Secured Creditor Remedies with respect to the Senior Priority Collateral, the Senior Priority Agent and the other Senior Priority Secured Parties may enforce the provisions of the Senior Priority Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Senior Priority Collateral upon foreclosure, to incur expenses in connection with such sale or Disposition, and to exercise all the rights and remedies of a secured creditor under the UCC or PPSA, as applicable, of any applicable jurisdiction, and the Bankruptcy Laws of any applicable jurisdiction.

(b) Each Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, agrees that any Senior Priority Collateral or any Proceeds of Senior Priority Collateral received by any Junior Priority Secured Party in connection with the Exercise of Secured Creditor Remedies with respect to any Senior Priority Collateral will be remitted to the applicable Senior Priority Agent and applied in accordance with Sections 5.1 and 5.2. Without limiting the generality of the foregoing, unless and until the Discharge of Senior Priority Obligations has occurred, except as expressly provided in this Agreement, the sole right of the Junior Priority Agent and the other Junior Priority Secured Parties with respect to the Senior Priority Collateral is to hold a Lien on the Senior Priority Collateral pursuant to the Junior Priority Documents for the period and to the extent granted therein and to receive a share of the Proceeds thereof, if any, after the Discharge of the Senior Priority Obligations has occurred in accordance with the terms hereof, the Senior Priority Documents and applicable law.

(c) Subject to Section 2.2(a), Section 2.4(a) and Section 4:

(i) each Junior Priority Agent, for itself and on behalf of the other Junior Priority Secured Parties, agrees that such Junior Priority Agent and the other Junior Priority Secured Parties will not take any action that would hinder any Exercise of Secured Creditor Remedies under the Senior Priority Documents with respect to the Senior Priority Collateral or is otherwise prohibited hereunder, including any sale, lease, exchange, transfer or other Disposition of the Senior Priority Collateral, whether by foreclosure or otherwise, and

(ii) each Junior Priority Agent, for itself and on behalf of the other Junior Priority Secured Parties, hereby waives any and all rights it or the other Junior Priority Secured Parties may have as a junior lien creditor with respect to the Senior Priority Collateral or otherwise to object to the manner in which the Senior Priority Agent or the other Senior Priority Secured Parties seek to enforce or collect the Senior Priority Obligations or the Liens granted in any of the Senior Priority Collateral, regardless of whether any action or failure to act by or on behalf of the Senior Priority Agent or the other Senior Priority Secured Parties is adverse to the interest of the Junior Priority Secured Parties in the Senior Priority Collateral.

(d) Each Junior Priority Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Junior Priority Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Senior Priority Agent or the other Senior Priority Secured Parties with respect to the Senior Priority Collateral as set forth in this Agreement and the Senior Priority Documents.

(e) Anything to the contrary in this Section 2.2 notwithstanding:

(i) any ABL Secured Parties, any Senior Note Secured Parties and any Junior Note Secured Parties may, if an Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, file a claim or statement of interest with respect to the ABL Obligations, the Senior Note Obligations and the Junior Note Obligations, respectively;

(ii) any Collateral Agent may take any action (not adverse to the priority status of any senior Liens on the Collateral held by any other Collateral Agent) in order to create, perfect or preserve its Lien in and to the Collateral, to prevent the running of any applicable statute of limitation or similar restriction on claims or to assert a compulsory cross-claim or counterclaim against any Grantor;

(iii) any Collateral Agent may file any necessary responsive or defensive pleadings (A) in opposition to any motion, claim, adversary proceeding, or other pleading made by any Person objecting to or otherwise seeking the disallowance of the ABL Obligations, the Senior Note Obligation or the Junior Note Obligations, respectively, or (B) asserting rights available to unsecured creditors of the applicable Grantor, in each case, in accordance with and not in violation of the terms of Sections 2.1, 2.2, 2.5, 5.1 or 5.2;

(iv) any ABL Secured Party, any Senior Note Secured Party or any Junior Note Secured Party, during an Insolvency or Liquidation Proceeding, may vote on any Plan that is not in violation of Sections 2.1, 2.3, 2.5, 5.1 or 5.2;

(v) any Collateral Agent may join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Collateral initiated by any other Collateral Agent to the extent that any such action would not reasonably be expected to restrain, hinder, limit, delay or otherwise interfere with any Exercise of Secured Creditor Remedies being conducted by any other Collateral Agent in accordance with Section 2.2(a);

(vi) any Collateral Agent may, so long as such action would not reasonably be expected to restrain, hinder, limit, delay or otherwise interfere with any Exercise of Secured Creditor Remedies by any other Collateral Agent being conducted in accordance with Section 2.2(a), engage or retain investment bankers or appraisers for the purposes of appraising or valuing the Collateral or to receive information or reports concerning the Collateral, in each case, pursuant to the terms of the ABL Documents, the Senior Note Documents, or the Junior Note Documents, as applicable, and applicable law;

(vii) any Collateral Agent may, so long as such action would not reasonably be expected to restrain, hinder, limit, delay or otherwise interfere with any Exercise of Secured Creditor Remedies by any other Collateral Agent being conducted in accordance with Section 2.2(a), take any action to seek and obtain specific performance or injunctive relief to compel a Grantor to comply with (or not to violate or breach) an obligation under the ABL Documents, the Senior Note Documents or the Junior Note Documents, as applicable, provided that such action does not include any action by a Junior Priority Agent to seek specific performance or injunctive relief against (A) any Senior Priority Agent or their respective Secured Parties or (B) the Disposition of any Collateral in contravention of the other provisions of this Agreement;

(viii) any Secured Party may bid for Collateral at any public or private sale thereof; provided, that: (A) with respect to ABL Priority Collateral, no Note Secured Parties may make a credit bid for such Collateral and offset Note Priority Obligations against the purchase price therefor unless the net Cash Proceeds of such bid are otherwise sufficient to cause the Discharge of ABL Priority Obligations and are applied to cause the Discharge of ABL Priority Obligations upon the consummation of such sale; (B) with respect to the Note Priority Collateral, no ABL Secured Parties may make a credit bid for such Collateral and offset ABL Priority Obligations against the purchase price therefor unless the net Cash Proceeds of such bid are sufficient to cause the Discharge of Senior Note Priority Obligations and the Discharge of Junior Note Priority Obligations and are applied to cause the Discharge of Senior Note Priority Obligations and the Discharge of Junior Note Priority Obligations upon the consummation of such sale and (C) the rights of the Note Secured Parties (as among themselves) to make a credit bid with respect to any Collateral shall be subject to and made in accordance with the Notes Intercreditor Agreement; and

(ix) any Collateral Agent may enforce the terms of any subordination agreement with any Person (other than a Grantor) with respect to debt of a Grantor that is subordinated to the ABL Obligations, the Senior Note Obligations or the Junior Note Obligations, as applicable, provided (i) prior written notice of such action is provided to each other Collateral Agent, (ii) no such action includes any Exercise of Secured Creditor Remedies in violation of the terms hereof, (iii) any payment or other property received by such Collateral Agent, to the extent resulting from a payment or other transfer of property or an interest in property of any Grantor, shall be deemed to be proceeds of Collateral subject to the other terms of this Agreement and (iv) any other payments received by such Collateral Agent in connection with such action shall otherwise be subject to the terms of such subordination agreement with any other Person, any related subordination agreement with each of the Collateral Agents and this Agreement.

2.3. Payments Over. Any Senior Priority Collateral, Cash Proceeds thereof or non-Cash Proceeds received by any Junior Priority Agent or any other Junior Priority Secured Parties in connection with the Exercise of Secured Creditor Remedies relating to the Senior Priority Collateral or otherwise received in violation of this Agreement shall be segregated and held in trust and forthwith paid over to the Senior Priority Agent to be applied in accordance with Sections 5.1 and 5.2, as applicable, in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Senior Priority Agent is hereby authorized to make any such endorsements as agent for the Junior Priority Agent or any such other Junior Priority Secured Parties. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

2.4. Other Agreements.

(a) Releases.

(i) If, in connection with:

(A) the Exercise of Secured Creditor Remedies by the Senior Priority Agent of any rights or remedies in respect of the Senior Priority Collateral in accordance with applicable law, including one or more sales, leases, exchanges, transfers or other Dispositions of the Senior Priority Collateral, in each case, at such time as the proceeds of such sales, leases, exchanges, transfers or other Dispositions are applied in accordance with Sections 5.1 and 5.2;

(B) any sale, lease, exchange, transfer or other Disposition of any Senior Priority Collateral permitted under the terms of both the Senior Priority Documents and the Junior Priority Documents;

(C) Dispositions of Senior Priority Collateral pursuant to Section 2.5(j) hereof; or

(D) Default Dispositions (defined below);

the Senior Priority Agent, for itself or on behalf of any of the other Senior Priority Secured Parties, releases any of its Liens on any part of the Senior Priority Collateral, then the Liens, if any, of the Junior Priority Agent, for itself or for the benefit of the other Junior Priority Secured Parties, on such Senior Priority Collateral (but not the unapplied Proceeds thereof, which shall be subject to the priorities set forth in Sections 2.1(a) and the application of Proceeds set forth in Sections 5.1 and 5.2 shall be automatically, unconditionally and simultaneously released and the Junior Priority Agent, for itself or on behalf of any such other Junior Priority Secured Parties, promptly shall execute and deliver to the Senior Priority Agent such termination statements, releases and other documents as the Senior Priority Agent may request to effectively confirm such release (which request shall specify the proposed terms of the sale and the type and amount of consideration to be received in connection therewith); provided, that with respect to clause (a)(i)(A) through (a)(i)(D), (1) no such release documents shall be required to be delivered (x) to any Grantor or (y) more than three Business Days prior to the date of the closing of the Disposition of such Senior Priority Collateral, (2) if the closing of the Disposition of such Senior Priority Collateral is not consummated within ten (10) Business Days of the anticipated closing date, the Senior Priority Agent shall promptly return all release documents to the Junior Priority Agent, (3) the effectiveness of any such release by the Junior Priority Agent shall be subject to the Disposition of such Senior Priority Collateral described in such request or on substantially similar terms and shall lapse in the event such Disposition does not occur within ten (10) Business Days of the anticipated closing date, (4) such Senior Priority Agent simultaneously releases its Lien on such Collateral, and (5) such Disposition is not to an Affiliate of a Grantor (unless such Disposition is pursuant to Sections 363 or 1129 of the Bankruptcy Code (or any other similar provision under applicable Bankruptcy Law) or pursuant to another public sale or public auction process). Any release of Liens required pursuant a Disposition of Collateral under Sections 2.4(a)(i)(A) or 2.4(a)(i)(D) shall be pursuant to a commercially reasonable Disposition.

(ii) In the event of any private or public Disposition of all or any material portion of the Collateral by one or more Grantors with the consent of any Senior Priority Agent after the occurrence and during the continuance of an applicable Event of Default, which Disposition is conducted by such Grantors with the consent of such Senior Priority Agent in connection with commercially reasonable efforts by such Senior Priority Agent to collect the applicable Senior Priority Obligations through the Disposition of Collateral (each Disposition of ABL Priority Collateral, an "ABL Default Disposition", each Disposition of Note Priority Collateral, a "Senior Note Default Disposition" and, together with the ABL Default Dispositions, "Default Dispositions"), then the Liens of the Junior Priority Agents on such Collateral shall be automatically, unconditionally, and simultaneously released; provided that (A) the applicable Senior Priority Agent also releases its Liens on such Collateral, (B) the net Cash Proceeds of any such Default Disposition are applied in accordance with Sections 5.1 and 5.2 (as if they were proceeds received in connection with an Exercise of Secured Creditor Remedies), (C) each Junior Priority Agent has received prior written notice that would have been required if the Default Disposition were a disposition of Collateral by a secured creditor under Article 9 of the UCC or otherwise required by applicable law, (D) each Grantor conducted such Default Disposition in a commercially reasonable manner as if such Default Disposition were a disposition of Collateral by a secured creditor in accordance with Article 9 of the UCC, and (E) such Disposition is not to an Affiliate of a Grantor (unless such Disposition is pursuant to Sections 363 or 1129 of the Bankruptcy Code (or any other similar provision under applicable Bankruptcy Law) or pursuant to another public sale or public auction process).

(iii) Until the Discharge of Senior Priority Obligations occurs, to the extent that the Senior Priority Secured Parties (A) have released any Lien on Senior Priority Collateral and any such Lien is later reinstated or (B) obtain any new Senior Priority Liens on assets constituting Senior Priority Collateral from the Grantors, then the Junior Priority Secured Parties shall be granted a Junior Priority Lien on any such Senior Priority Collateral.

(b) Insurance. Unless and until the Discharge of Senior Priority Obligations has occurred, the Senior Priority Agent and the other Senior Priority Secured Parties shall have the sole and exclusive right, subject to the rights of the Grantors under the Senior Priority Documents, to adjust settlement for any insurance policy covering the Senior Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) in respect of the Senior Priority Collateral. Notwithstanding anything contained in this Agreement to the contrary, in the event that any Proceeds are derived from any insurance policy that covers ABL Priority Collateral and Note Priority Collateral, then, solely for the purposes of this Agreement, the allocation of proceeds of such insurance policy shall be allocated to the ABL Priority Collateral in an amount not less than the sum of (A) the book value determined in accordance with GAAP, but not less than cost, of any ABL Priority Collateral consisting of inventory that is the subject of such loss, determined as of the date of such loss, (B) the book value determined in accordance with GAAP of any ABL Priority Collateral consisting of accounts that are the subject of such loss, determined as of the date of such loss, and (C) the fair market value of all other ABL Priority Collateral that is the subject of such loss, determined as of the date of such loss.

(c) Amendments to Documents.

(i) Each Note Agent, on behalf of itself and the applicable Note Secured Parties, hereby agrees that, without affecting the obligations of such Note Agent and the applicable Note Secured Parties hereunder, the ABL Agent and the ABL Secured Parties may, at any time and from time to time, in their sole discretion without the consent of or notice to any Note Agent or any Note Secured Party, and without incurring any liability to any Note Agent or any Note Secured Party or affecting, impairing or releasing the priority of any Liens on the Collateral as provided for herein, amend, restate, supplement, replace, Refinance, extend, consolidate, restructure, or otherwise modify any of the ABL Documents in any manner whatsoever, other than in a manner which would have the effect of contravening the terms of this Agreement, provided that with respect to any Refinancing of any of the ABL Obligations, the holders of such Refinancing indebtedness bind themselves in a writing addressed to each Note Agent to the terms of this Agreement.

(ii) The ABL Agent, on behalf of itself and the ABL Secured Parties, hereby agrees that, without affecting the obligations of the ABL Agent and the ABL Secured Parties hereunder, each Note Agent and the Note Secured Parties may, at any time and from time to time, in their sole discretion without the consent of or notice to the ABL Agent or any ABL Secured Party,

and without incurring any liability to the ABL Agent or any ABL Secured Party or impairing or releasing the priority of any Liens on the Collateral as provided for herein, amend, restate, supplement, replace, Refinance, extend, consolidate, restructure, or otherwise modify any of the Note Documents in any manner whatsoever other than in any manner which would have the effect of contravening the terms of this Agreement, provided that with respect to any Refinancing of any of the Note Obligations, the holders of such Refinancing indebtedness bind themselves in a writing addressed to the ABL Agent to the terms of this Agreement.

(d) Rights As Unsecured Creditors. Subject to, as between the Note Agents and the Notes Secured Parties, the Notes Intercreditor Agreement, ach Junior Priority Agent and the other Junior Priority Secured Parties may exercise rights and remedies as unsecured creditors against the Borrower or any other Grantor that has guaranteed the Junior Priority Obligations in accordance with the terms of the Junior Priority Documents and applicable law to the extent such exercise of rights and remedies is not in violation of Sections 2.1, 2.2, 2.5, 5.1 or 5.2. Except as otherwise set forth in Section 2.1 and 2.3, nothing in this Agreement shall prohibit the receipt by the Junior Priority Agent or any other Junior Priority Secured Parties of the required payments of interest, principal and other amounts in respect of the Junior Priority Obligations so long as such receipt is not the direct or indirect result of any Exercise of Secured Creditor Remedies by the Junior Priority Agent or any other Junior Priority Secured Parties in respect of the Senior Priority Collateral or the enforcement in violation of this Agreement of any Lien held by any of them. Any judgment lien obtained as a result of the exercise of rights and remedies as unsecured creditors shall be subject to the terms and conditions of this Agreement. Notwithstanding the foregoing, the ABL Secured Parties and the Notes Secured Parties, as applicable, shall give the ABL Agent or the Controlling Note Agent, as applicable, not less than five (5) Business Days) or such shorter period if Exigent Circumstances exist) written notice prior to the filing of an involuntary bankruptcy petition against any Grantor.

(e) Bailee for Perfection.

(i) The Senior Priority Agent agrees to hold that part of the Senior Priority Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC, the PPSA or any other applicable law (such Senior Priority Collateral being the "Pledged Senior Priority Collateral") as collateral agent for the Senior Priority Secured Parties and as bailee for and, with respect to any collateral that cannot be perfected in such manner, as agent for, each Junior Priority Agent (on behalf of the Junior Priority Secured Parties) and any assignee thereof solely for the purpose of perfecting the security interest granted under the Senior Priority Documents and the Junior Priority Documents, respectively, subject to the terms and conditions of this Section 2.4(e).

(ii) Subject to the terms of this Agreement, until the Discharge of Senior Priority Obligations has occurred, the Senior Priority Agent shall be entitled to deal with the Pledged Senior Priority Collateral in accordance with the terms of the Senior Priority Documents as if the Liens of the Junior Priority Agents under the Junior Priority Security Documents did not exist. The rights of the Junior Priority Agents shall at all times be subject to the terms of this Agreement and to the Senior Priority Agent's rights under the Senior Priority Documents.

(iii) The Senior Priority Agent shall have no obligation whatsoever to the Junior Priority Agents or any other Junior Priority Secured Party to ensure that the Pledged Senior Priority Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this Section 2.4(e). The duties or responsibilities of the Senior Priority Agent under this Section 2.4(e) shall be limited solely to holding the Pledged Senior Priority Collateral as bailee or agent in accordance with this Section 2.4(e).

(iv) The Senior Priority Agent acting pursuant to this Section 2.4(e) shall not have by reason of the Senior Priority Security Documents, the Junior Priority Security Documents, this Agreement or any other document a fiduciary relationship in respect of the Junior Priority Agents or any other Junior Priority Secured Party.

(v) Upon the applicable Discharge of the Senior Priority Obligations, the applicable Collateral Agent (in respect of the Senior Priority Obligations having been discharged) shall deliver or cause to be delivered the remaining Pledged Senior Priority Collateral (if any) in its possession or in the possession of its agents or bailees, together with any necessary endorsements, first, to the Senior Priority Agent to the extent Senior Priority Obligations remain outstanding, second, to the Junior Priority Agent to the extent Junior Priority Obligations remain outstanding, and third, to the applicable Grantor (in each case, so as to allow such Person to obtain control of such Pledged Senior Priority Collateral) and will cooperate with the applicable Collateral Agent in assigning (without recourse to or warranty by any Collateral Agent or any other Secured Party or agent or bailee thereof) control over any other Pledged

Senior Priority Collateral under its control. The applicable Collateral Agent further agrees to take all other action reasonably requested by such Person (at the sole cost and expense of the Grantors or such Person) in connection with such Person obtaining a Senior Priority interest in the Pledged Senior Priority Collateral or as a court of competent jurisdiction may otherwise direct.

(vi) Notwithstanding anything to the contrary herein, if any Junior Priority Obligations remain outstanding upon the Discharge of ABL Priority Obligations and Discharge of Senior Note Priority Obligations, all rights of the Senior Priority Agent hereunder and under the Senior Priority Security Documents (A) with respect to the delivery and control of any part of the Senior Priority Collateral, and (B) to direct, instruct, vote upon or otherwise influence the maintenance or Disposition of such Senior Priority Collateral, shall immediately, and (to the extent permitted by law) without further action on the part of either of the Junior Priority Agent or the Senior Priority Agent, pass to the Junior Priority Agent, who shall thereafter hold such rights for the benefit of the Junior Priority Secured Parties. Each of the Senior Priority Agent and the Grantors agrees that it will, if any Junior Priority Obligations remain outstanding upon the Discharge of ABL Priority Obligations and Discharge of Senior Note Priority Obligations, take any other action required by any law or reasonably requested by the Junior Priority Agent in connection with the Junior Priority Agent's establishment and perfection of a Senior Priority security interest in the Senior Priority Collateral, at the expense of the Grantors or if not paid by the Grantors, the Junior Priority Agent, and subject in all cases to any Junior Priority Permitted Liens and to Section 2.4(f).

(vii) Notwithstanding the foregoing, solely during the time that the Senior Note Agent or the Junior Note Agent, as applicable, is permitted to Exercise any Secured Creditor Remedies with respect to the ABL Priority Collateral pursuant to Section 2.2, the Senior Note Agent or the Junior Note Agent, as applicable, shall have the right to take actions under and with respect to any collateral access agreement and any deposit account or securities account subject to any "control agreement", in each case, to which the Senior Note Agent or the Junior Note Agent, as applicable, is a party; provided, that (A) the Senior Note Agent shall provide the ABL Agent not less than two Business Days' prior written notice of its intent to take action pursuant to this Section 2.4(e), (B) the Junior Note Agent shall provide the ABL Agent and the Senior Note Agent not less than two Business Days' prior written notice of its intent to take action pursuant to this Section 2.4(e), (C) upon written request from the Senior Note Agent or the Junior Note Agent, as applicable, to the ABL Agent, the ABL Agent shall notify the third parties under such collateral access agreements and control agreements to which the Senior Note Agent or the Junior Note Agent, as applicable, is a party, that the Senior Note Agent or the Junior Note Agent, as applicable, is the "Lender Representative" or "Control Agent" (or any similar term) entitled to take action thereunder and (D) any ABL Priority Collateral received by the Senior Note Agent or the Junior Note Agent pursuant to this sentence shall be remitted to the ABL Agent for application in accordance with the terms hereof.

(f) When Discharge of Senior Priority Obligations Deemed to Not Have Occurred. Notwithstanding anything to the contrary herein, if concurrently with the Discharge of Senior Priority Obligations, the Borrower or any other Grantor enters into any Permitted Refinancing of any Senior Priority Obligations, then such Discharge of Senior Priority Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement, and the obligations under the Permitted Refinancing shall automatically be treated as Senior Priority Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, the term "Senior Priority Credit Agreement" shall be deemed appropriately modified to refer to such Permitted Refinancing and the Senior Priority Agent under such Senior Priority Documents shall be a Senior Priority Agent for all purposes hereof and the new secured parties under such Senior Priority Documents shall automatically be treated as the Senior Priority Secured Parties for all purposes of this Agreement. Upon receipt of a notice stating that the Borrower and/or any other Grantor is entering into a new Senior Priority Document in respect of a Permitted Refinancing of Senior Priority Obligations (which notice shall include the identity of the new collateral agent, such agent, the "New Senior Priority Agent"), and delivery by the New Senior Priority Agent of an Intercreditor Agreement Joinder, the Junior Priority Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Borrower or any other Grantor or such New Senior Priority Agent shall reasonably request in order to provide to the New Senior Priority Agent the rights contemplated hereby, in each case, consistent in all respects with the terms of this Agreement. The New Senior Priority Agent shall agree to be bound by the terms of this Agreement. If the new Senior Priority Obligations under the new Senior Priority Documents are secured by assets of the Grantors of the type constituting Senior Priority Collateral that do not also secure the Junior Priority Obligations, then the Junior Priority Obligations shall be secured at such time by a Junior Priority Lien on such assets to the same extent provided in the Junior Priority Security Documents with respect to the other Senior Priority Collateral. If the new Senior Priority Obligations under the new Senior Priority Documents are secured by assets of the Grantors of the type constituting Junior Priority Collateral that do not also secure the Junior Priority Obligations, then the Junior Priority Obligations shall be secured at such time by a Senior Priority Lien on such assets to the same extent provided in the Junior Priority Security Documents with respect to the other Junior Priority Collateral.

(g) When Discharge of Junior Priority Obligations Deemed to Not Have Occurred. Notwithstanding anything to the contrary herein, if concurrently with the Discharge of Junior Priority Obligations, the Borrower or any other Grantor enters into any Permitted Refinancing of any Junior Priority Obligations, then such Discharge of Junior Priority Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement, and the obligations under the Permitted Refinancing shall automatically be treated as Junior Priority Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, the term "Junior Priority Credit Agreement" shall be deemed appropriately modified to refer to such Permitted Refinancing and the Junior Priority Agent under such Junior Priority Documents shall be a Junior Priority Agent for all purposes hereof and the new secured parties under such Junior Priority Documents shall automatically be treated as the Junior Priority Secured Parties for all purposes of this Agreement. Upon receipt of a notice stating that the Borrower and/or any other Grantor is entering into a new Junior Priority Document in respect of a Permitted Refinancing of Junior Priority Obligations (which notice shall include the identity of the new collateral agent, such agent, the "New Junior Priority Agent"), and delivery by the New Junior Priority Agent of an Intercreditor Agreement Joinder, the Senior Priority Agents shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Borrower or any other Grantor or such New Junior Priority Agent shall reasonably request in order to provide to the New Junior Priority Agent the rights contemplated hereby, in each case, consistent in all respects with the terms of this Agreement. The New Junior Priority Agent shall agree to be bound by the terms of this Agreement. If the new Junior Priority Obligations under the new Junior Priority Documents are secured by assets of the Grantors of the type constituting Junior Priority Collateral that do not also secure the Senior Priority Obligations, then the Senior Priority Obligations shall be secured at such time by a Senior Priority Lien on such assets to the same extent provided in the Senior Priority Security Documents with respect to the other Junior Priority Collateral. If the new Junior Priority Obligations under the new Junior Priority Documents are secured by assets of the Grantors of the type constituting Senior Priority Collateral that do not also secure the Senior Priority Obligations, then the Senior Priority Obligations shall be secured at such time by a Junior Priority Lien on such assets to the same extent provided in the Senior Priority Security Documents with respect to the other Senior Priority Collateral.

2.5. Insolvency or Liquidation Proceedings.

(a) Finance Issues. If the Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Senior Priority Agent shall desire to (i) permit or otherwise consent to the use of cash collateral constituting Senior Priority Collateral on which the Senior Priority Agent or any other creditor has a Lien under Section 363 or any similar Bankruptcy Law (the "Senior Priority Cash Collateral") or (ii) provide or consent to any Person providing DIP Financing (such financing under this clause (ii) "Senior Priority DIP Financing"), then the Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, agrees that it will raise no objection (on any basis available to a secured creditor but not unsecured creditors generally) to such use of cash collateral constituting Senior Priority Collateral or to the fact that such DIP Financing may be granted Liens on the Senior Priority Collateral and will not request adequate protection or any other relief with respect to the Senior Priority Collateral (except as expressly agreed by the Senior Priority Agent or to the extent permitted by Section 2.5(c)) and, to the extent the Liens on the Senior Priority Collateral securing the Senior Priority Obligations are subordinated or *pari passu* with the Liens on the Senior Priority Collateral securing such DIP Financing, the Junior Priority Agent will subordinate its Liens in the Senior Priority Collateral to the Liens securing such DIP Financing (and all obligations relating thereto), in each case, so long as (A) the interest rate, fees, advance rates, lending sublimits and limits and other terms are commercially reasonable under the circumstances, (B) the Junior Priority Agent retains a Lien on the Collateral (including Proceeds thereof arising after the commencement of such Insolvency or Liquidation Proceeding) with the same priority as existed prior to the commencement of such Insolvency or Liquidation Proceeding, subordinated to the Liens securing such DIP Financing, (C) the Junior Priority Agent receives a replacement Lien on post-petition assets to the same extent granted to the Senior Priority Secured Parties providing the DIP Financing, which Lien will be subordinated to the Liens securing the Senior Priority Obligations and such Senior Priority DIP Financing (and all obligations relating thereto) on the same basis as the other Liens on Senior Priority Collateral securing the Junior Priority Obligations are so subordinated to the Senior Priority Obligations under this Agreement, (D) with respect to a Senior Priority DIP Financing consented to by the ABL Agent, the aggregate principal amount of such DIP Financing, together with the aggregate principal amount of Outstanding ABL Principal Obligations outstanding under the Senior Priority Documents as of the commencement of the Insolvency or Liquidation Proceeding (and not otherwise refinanced with or "rolled up" by such Senior Priority DIP Financing), does not exceed the Maximum ABL Principal Obligations, (E) with respect to a Senior Priority DIP Financing consented to by the Senior Note Agent, the aggregate principal amount of such DIP Financing, together with the aggregate principal amount of

Outstanding Note Principal Obligations outstanding under the Senior Priority Documents as of the commencement of the Insolvency or Liquidation Proceeding (and not otherwise refinanced with or "rolled up" by the Senior Priority DIP Financing), does not exceed the Maximum Senior Note Principal Obligations, (F) such DIP Financing does not compel any Grantor to seek confirmation of any specific Plan for which all or substantially all of the materials terms are set forth in the court order authorizing such DIP Financing or the accompanying financing documentation, (G) such DIP Financing does not expressly require the liquidation of all or substantially all of the Collateral prior to a default under such DIP Financing (as distinguished from the Disposition of any Grantor's business as a going concern) and (H) such DIP Financing is subject to the terms of this Agreement). If, in connection with any use of Senior Priority Cash Collateral or Senior Priority DIP Financing, any Liens on the Senior Priority Collateral are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve-out," or fees owed to the United States Trustee, then the Liens on the Junior Priority Collateral shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the Senior Priority Collateral consistent with this Agreement. The Junior Priority Secured Parties shall not provide or offer to provide any DIP Financing secured by a Lien on the Senior Priority Collateral senior or *pari passu* with the Liens on the Senior Priority Collateral securing the Senior Priority Obligations, without the prior written consent of the Senior Priority Agent. The rights of the Junior Note Agent and any Junior Note Secured Party to provide or offer to provide any DIP Financing secured by a Lien on any Notes Priority Collateral shall be subject to the terms of the Notes Intercreditor Agreement.

(b) Relief from the Automatic Stay. Until the Discharge of Senior Priority Obligations has occurred, the Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, agrees that (i) none of them shall seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Senior Priority Collateral, (A) without the prior written consent of the Senior Priority Agent or (B) unless and to the extent the Senior Priority Agent has obtained relief from such stay in respect of the Senior Priority Collateral and (ii) none of them shall oppose any relief from the automatic stay or other stay in any Insolvency or Liquidation Proceeding sought by the Senior Priority Agent in respect of the Senior Priority Collateral.

(c) Adequate Protection.

(i) The Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, agrees that none of them shall contest (or support any other Person contesting) (A) any request by the Senior Priority Agent or the other Senior Priority Secured Parties for adequate protection with respect to any Senior Priority Collateral or (B) any objection by the Senior Priority Agent or the other Senior Priority Secured Parties to any motion, relief, action or proceeding based on the Senior Priority Agent or the other Senior Priority Secured Parties claiming a lack of adequate protection with respect to the Senior Priority Collateral.

(ii) Notwithstanding the foregoing provisions in this Section 2.5(c), in any Insolvency or Liquidation Proceeding, (A) if the Senior Priority Secured Parties (or any subset thereof) are granted adequate protection in the form of a Lien on additional collateral in connection with any DIP Financing, then the Junior Priority Agent, on behalf of itself or any of the other Junior Priority Secured Parties, may seek or request adequate protection in the form of a Lien on such additional or replacement collateral and (1) to the extent any Lien so granted to the Junior Priority Secured Parties (or any subset thereof) in accordance with this clause (A) is on Senior Priority Collateral, such Lien will be subordinated to the Liens securing the Senior Priority Obligations and such DIP Financing (and all obligations relating thereto) on the same basis as the other Liens on Senior Priority Collateral securing the Junior Priority Obligations are so subordinated to the Senior Priority Obligations under this Agreement, and (2) to the extent any Lien so granted to the Senior Priority Secured Parties (or any subset thereof) in accordance with this clause (A) is on Junior Priority Collateral, such Lien will be subordinated to the Liens securing the Junior Priority Obligations on the same basis as the other Liens on Junior Priority Collateral securing the Senior Priority Obligations are so subordinated to the Junior Priority Obligations under this Agreement; and (B) in the event the Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, seeks or requests adequate protection in respect of Senior Priority Collateral securing Junior Priority Obligations and such adequate protection is granted in the form of additional or replacement collateral, then the Junior Priority Agent, on behalf of itself or any of the other Junior Priority Secured Parties, agrees that the Senior Priority Agent shall also be granted a senior Lien on such additional or replacement collateral as security for the Senior Priority Obligations and for any such DIP Financing provided by the Senior Priority Secured Parties and that any Lien on such additional collateral securing the Junior Priority Obligations shall be subordinated to the Liens on such collateral securing the Senior Priority Obligations and any such DIP Financing provided by the Senior Priority Secured Parties (and all obligations relating thereto) and to any other Liens granted to the Senior Priority Secured Parties as adequate protection on the same basis as the other Liens on Senior Priority Collateral securing the Junior Priority Obligations are so subordinated to the Senior Priority Obligations under this Agreement.

(iii) Each Senior Priority Agent may seek, without objection from the Junior Priority Secured Parties, adequate protection with respect to the Senior Priority Secured Parties' rights in the Senior Priority Collateral in the form of periodic cash payments payable from such Senior Priority Collateral or the proceeds of Senior Priority DIP Financing. Except as provided in the immediately preceding sentence, no Agent or Secured Party may seek cash adequate protection payments without the consent of each Senior Priority Agent.

(iv) Any adequate protection granted in favor of any Senior Priority Secured Party in the form of a superpriority or other administrative expense claim and any claim in favor of any Senior Priority Secured Party arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) ("Senior 507(b) Claims"), shall be *pari passu* with the grant of adequate protection in favor of the other Senior Priority Secured Parties in the form of a superpriority or other administrative expense claim and any Senior 507(b) Claims in favor of such other Senior Priority Secured Parties. Any claim arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) in favor of any Junior Priority Secured Party shall be *pari passu* with the claims arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) in favor of the other Junior Priority Secured Parties (collectively, "Junior 507(b) Claims"), and all Junior 507(b) Claims shall be junior and subordinate in right of payment to the Senior 507(b) Claims and the holders of the Junior 507(b) Claims agree that, in connection with any plan of reorganization in such Insolvency or Liquidation Proceeding, such Junior 507(b) Claims may be paid in any combination of cash, securities, or other property having a present value equal to the amount of such Junior 507(b) Claims as of the effective date of confirmation of such plan.

(v) Except as otherwise expressly provided herein, without the consent of the Senior Priority Agent, no Junior Priority Agent or other Junior Priority Secured Parties may seek any other adequate protection with respect to their rights in the Collateral.

(d) No Waiver. Subject to clause (iii) of Section 2.2(a) and except as provided in Section 2.5(c), nothing contained herein shall prohibit or in any way limit the Senior Priority Agent or any other Senior Priority Secured Party from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by the Junior Priority Agent or any of the other Junior Priority Secured Parties in respect of the Senior Priority Collateral, including the seeking by the Junior Priority Agent or any other Junior Priority Secured Parties of adequate protection in respect thereof or the asserting by the Junior Priority Agent or any other Junior Priority Secured Parties of any of its rights and remedies under the Junior Priority Documents or otherwise in respect thereof.

(e) Post-Petition Interest. Neither the Junior Priority Agent nor any other Junior Priority Secured Party shall oppose or seek to challenge any claim by the Senior Priority Agent or any other Senior Priority Secured Party for allowance in any Insolvency or Liquidation Proceeding of Senior Priority Obligations consisting of post-petition interest, premiums, fees, costs, charges or expenses.

(f) Waiver. The Junior Priority Agent, for itself and on behalf of the Junior Priority Secured Parties, agrees that it shall consent to, and shall not object to, oppose, support any objection, or take any other action to impede, the right of any Senior Priority Secured Party or the Senior Priority Agent to make an election under Section 1111(b)(2) of the Bankruptcy Code (or similar Bankruptcy Law). The Junior Priority Agent, for itself and on behalf of the other Junior Priority Secured Parties, waives any claim it may hereafter have against any Senior Priority Secured Party arising out of the election of any Senior Priority Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code (or similar Bankruptcy Law). Nothing in this Agreement shall restrict the holder of any Senior Priority DIP Financing from having, or seeking to have, such Senior Priority DIP Financing repaid, in whole or in part, from the proceeds of the assertion of any claim under Section 506(c) of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law).

(g) No Waiver. Except as otherwise expressly provided in this Agreement, nothing contained herein shall prohibit or in any way limit the Senior Priority Agent or any Senior Priority Secured Party from objecting in any Insolvency or Liquidation Proceeding to any action taken by the Junior Priority Agent or any Junior Priority Secured Party.

(h) Plan of Reorganization. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of Senior Priority Obligations and on account of Junior Priority Obligations, then, to the extent the debt obligations distributed on account of the Senior Priority Obligations and on account of the Junior Priority Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

(i) Enforceability and Continuing Priority. This Agreement shall be applicable both before and after the commencement of any Insolvency or Liquidation Proceeding and all converted or succeeding cases in respect thereof. The relative rights of the Secured Parties in or to any distributions from or in respect of any Collateral or proceeds of Collateral, shall continue after the commencement of any Insolvency or Liquidation Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code (or similar Bankruptcy Law).

(j) Asset Dispositions. Until the Discharge of Senior Priority Obligations has occurred, the Junior Priority Agent, for itself and on behalf of the other Junior Priority Secured Parties, agrees that, in the event of any Insolvency or Liquidation Proceeding, the Junior Priority Secured Parties will not object or oppose, or support any Person in objecting or opposing, on any basis available to a secured creditor (but not unsecured creditors generally) any motion for the Disposition of any Senior Priority Collateral free and clear of the Liens of the Junior Priority Agent and the other Junior Priority Secured Parties or other claims under Sections 363, 365 or 1129 of the Bankruptcy Code, or any comparable provision of any Bankruptcy Law (and including any motion for bid procedures or other procedures related to the Disposition that is the subject of such motion), and shall be deemed to have consented (subject to its right to object to such Disposition to the extent expressly set forth above) to any such Disposition of any Senior Priority Collateral under Section 363(f) of the Bankruptcy Code, or any comparable provision of any Bankruptcy Law, that has been consented to by the Senior Priority Agent (to the extent consent of the holder of a Lien is required); provided, that, the Proceeds of such Disposition of any Collateral to be applied to the Junior Priority Obligations or the Senior Priority Obligations will be applied in accordance with Sections 5.1 and 5.2.

2.6. Reliance; Waivers; Etc.

(a) Reliance. Other than any reliance on the terms of this Agreement, the Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, acknowledges that it and such other Junior Priority Secured Parties have, independently and without reliance on the Senior Priority Agent or any other Senior Priority Secured Parties, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into such Junior Priority Documents and be bound by the terms of this Agreement and they will continue to make their own credit decisions in taking or not taking any action under the Junior Priority Credit Agreement or this Agreement.

(b) No Warranties or Liability. The Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, acknowledges and agrees that the Senior Priority Agent and the other Senior Priority Secured Parties have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Senior Priority Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Senior Priority Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under their respective Senior Priority Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Senior Priority Agent and the other Senior Priority Secured Parties shall have no duty to the Junior Priority Agent or any of the other Junior Priority Secured Parties to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an Event of Default or default under any agreements with the Borrower or any other Grantor (including the Senior Priority Documents and the Junior Priority Documents), regardless of any knowledge thereof which they may have or be charged with.

(c) No Waiver of Lien Priorities.

(i) No right of the Senior Priority Agent, the other Senior Priority Secured Parties, or any of them to enforce any provision of this Agreement or any Senior Priority Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Borrower or any other Grantor or by any act or failure to act by the Senior Priority Agent or any other Senior Priority Secured Party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Senior Priority Documents or any of the Junior Priority Documents, regardless of any knowledge thereof which the Senior Priority Agent or the other Senior Priority Secured Parties, or any of them, may have or be otherwise charged with.

(ii) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Borrower and the other Grantors under the Senior Priority Documents and subject to the other provisions of this Agreement), the Senior Priority Agent, the other Senior Priority Secured Parties, and any of them, may, at any time and from time to time in accordance with the Senior Priority Documents and/or applicable law, without the consent of, or notice to, the Junior Priority Agent or any other Junior Priority Secured Party, without incurring any liabilities to the Junior Priority Agent or any other Junior Priority Secured Party and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Junior Priority Agent or any other Junior Priority Secured Party is affected, impaired or extinguished thereby) do any one or more of the following:

(A) sell, exchange, realize upon, enforce or otherwise deal with in any manner (subject to the terms hereof and applicable law) and in any order any part of the Senior Priority Collateral or any liability of the Borrower or any other Grantor to the Senior Priority Agent or the other Senior Priority Secured Parties, or any liability incurred directly or indirectly in respect thereof;

(B) settle or compromise any Senior Priority Obligation or any other liability of the Borrower or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof; and

(C) exercise or delay in or refrain from exercising any right or remedy against the Borrower or any security or any other Grantor or any other Person, elect any remedy and otherwise deal freely with the Borrower, any other Grantor or any Senior Priority Collateral and any security and any guarantor or any liability of the Borrower or any other Grantor to the Senior Priority Secured Parties or any liability incurred directly or indirectly in respect thereof.

(iii) The Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, also agrees that the Senior Priority Agent and the other Senior Priority Secured Parties shall have no liability to the Junior Priority Agent or any other Junior Priority Secured Party, and the Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, hereby waives any claim against the Senior Priority Agent and any other Senior Priority Secured Party, arising out of any and all actions which the Senior Priority Agent or the other Senior Priority Secured Parties may take or permit or omit to take with respect to:

(A) the Senior Priority Documents (other than this Agreement);

(B) the collection of the Senior Priority Obligations and the Excess ABL Debt, the Excess Senior Note Debt or the Excess Junior Note Debt, as applicable; or

(C) the foreclosure upon, or sale, liquidation or other Disposition of, any Senior Priority Collateral in accordance with this Agreement and applicable law.

(iv) The Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, agrees that the Senior Priority Agent and the other Senior Priority Secured Parties have no duty to the Junior Priority Agent or the other Junior Priority Secured Parties in respect of the maintenance or preservation of the Senior Priority Collateral, the Senior Priority Obligations or otherwise, except as otherwise provided in this Agreement.

(v) The Junior Priority Agent, on behalf of itself and the other Junior Priority Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshaling or other similar right that may otherwise be available under applicable law with respect to the Senior Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

(d) Obligations Unconditional. All rights, interests, agreements and obligations of the Senior Priority Agent and the other Senior Priority Secured Parties and the Junior Priority Agent and the other Junior Priority Secured Parties, respectively, under this Agreement shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of any Senior Priority Document or any Junior Priority Document;

(ii) any change in the time, manner or place of payment of, or in any other terms of, all or any of the Senior Priority Obligations or Junior Priority Obligations, or any amendment or waiver or other modification, whether by course of conduct or otherwise, of the terms of any Senior Priority Document or any Junior Priority Document;

(iii) any exchange of any security interest in any Senior Priority Collateral or any amendment, waiver or other modification permitted hereunder, whether in writing or by course of conduct or otherwise, of all or any of the Senior Priority Obligations or Junior Priority Obligations; or

(iv) the commencement of any Insolvency or Liquidation Proceeding in respect of one or more of the Borrower or any other Grantor.

Section 3. Option to Purchase ABL Obligations and Senior Note Obligations.

3.1. ABL Obligations Purchase Option. At any time during the exercise period described in Section 3.3 below, any Senior Note Secured Party or any Junior Note Secured Party shall have the right to purchase by way of assignment (and shall thereby also assume all commitments and duties of the ABL Secured Parties), all, but not less than all, of the ABL Priority Obligations (other than the ABL Priority Obligations of a Defaulting ABL Secured Party (as defined below)). Any purchase pursuant to this Section 3.1 shall be made as follows:

(a) The purchase price shall be equal to the sum of (i) 100% of the principal amount of all loans, advances or other similar extensions of credit that constitute ABL Priority Obligations (including Bank Product Obligations and unreimbursed amounts drawn in respect of letters of credit, but excluding the undrawn amount of then outstanding letters of credit) (in each case, to the extent of their respective interests therein as the ABL Secured Parties), and all accrued and unpaid interest thereon through the date of purchase, plus (ii) all accrued and unpaid fees, default interest, post-petition interest and expenses (including Enforcement Expenses), Indemnity Amounts and other amounts through the date of purchase. In addition to the payment of the purchase price described above, the Senior Note Secured Parties or the Junior Note Secured Parties, as applicable, shall be obligated (which obligation shall be expressly provided in the assignment documentation described in Section 3.1(f)) to reimburse each issuing lender (or any ABL Secured Party required to pay same) for all amounts thereafter drawn with respect to any letters of credit constituting ABL Priority Obligations which remain outstanding after the date of any purchase pursuant to this Section 3, together with all fronting fees and other amounts which may at any future time be owing to the respective issuing lenders with respect to such letters of credit, in each case, in accordance with and pursuant to clause (c) below.

(b) The purchase price described in preceding clause (a) shall be payable in cash on the date of purchase against transfer to the respective Senior Note Secured Party(s) or Junior Note Secured Party(s) (which purchase shall be allocated on a pro rata basis based on the principal amount of the Senior Note Obligations held by such Senior Note Secured Parties or Junior Note Obligations held by such Junior Note Secured Parties, as applicable) (without recourse and without any representation or warranty whatsoever, whether as to the enforceability of any ABL Obligation or the validity, enforceability, perfection, priority or sufficiency of any Lien securing, or guarantee or other supporting obligation for, any ABL Obligation or as to any other matter whatsoever, except the representations and warranties by each ABL Lender (i) that the debt being transferred by such ABL Lender is free and clear of all Liens, (ii) as to the amount of its portion of the ABL Obligations being acquired, and (iii) that such ABL Lender has the right to assign its right, title and interest in and to the ABL Obligations and the commitments of such ABL Lender under the ABL Documents); provided, that the purchase price in respect of any outstanding letter of credit described in clause (a) above that remains undrawn on the date of purchase shall be payable in cash as and when such letter of credit is drawn upon solely from the cash collateral account described in clause (c) below.

(c) Such purchase shall be accompanied by a deposit of cash collateral under the sole dominion and control of the ABL Agent or its designee in an amount equal to (i) one hundred three percent (103%) of the sum of the aggregate undrawn amount of all then outstanding letters of credit described in clause (a) above, as security for the respective Senior Note Secured Party(s)' or the Junior Note Secured Party(s)', as applicable, obligation to pay amounts as provided in preceding clause (a), it being understood and agreed that (A) at the time any fronting or similar fees are owing to an issuer with respect to any such letter of credit, the ABL Agent may apply amounts deposited with it as described above to pay same and (B) upon any drawing under any such letter of credit, the ABL Agent shall apply amounts deposited with it as described above to repay the respective unpaid drawing (it being further understood and agreed that after giving effect to any payment made as described above in this clause (i), those amounts (if any) then on deposit with the ABL Agent as described in this clause (i) which exceed one hundred three percent (103%) of the sum of the aggregate undrawn amount of all then outstanding letters of credit described in clause (a) above shall be returned to the respective Senior Note Secured Party(s) (as their interests appear) or the Junior Note Secured Party(s) (as their interests appear), as applicable), plus (ii) one hundred percent (100%) of Bank Product Obligations constituting ABL Priority Obligations not paid pursuant to clause (a)(i)(A) above (such cash collateral shall be applied to the reimbursement of such Bank Product Obligations as and when such obligations become due and payable and, at such time as all of such Bank Product Obligations are paid in full in cash, the remaining cash collateral held by the ABL Agent in respect of Bank Product Obligations shall be remitted to the Senior Note Agent (for the benefit of the purchasing Senior Note Secured Parties) or the Junior Note Agent (for the benefit of the purchasing Junior Note Secured Parties), as applicable), plus (iii) such other amounts reasonably determined by ABL Agent to cause the Discharge of ABL Priority Obligations pursuant to clause (f) of such definition. Furthermore, at such time as all such letters of credit have been cancelled, expired or been fully drawn, as the case may be, and after all applications described above in respect of Bank Product Obligations have been made, any excess cash collateral deposited as described above in this clause (c) (and not previously applied or released as provided above) shall be returned to the respective Senior Note Secured Party(s) or the Junior Note Secured Party(s), as applicable, as their interests appear. The ABL Agent and the ABL Lenders agree not to amend, modify, renew or extend any such letters of credit or Bank Product Obligations during the period during which such cash collateral is deposited as described above in this clause (c).

(d) The purchase price described in the preceding clause (a) shall be accompanied by a waiver by the Senior Note Agent (on behalf of itself and the other Senior Note Secured Parties) or the Junior Note Agent (on behalf of itself and the other Junior Note Secured Parties), as applicable, of all claims arising out of this Agreement and the transactions contemplated hereby as a result of exercising the purchase option contemplated by this Section 3.

(e) All amounts payable to the various ABL Secured Parties in respect of the assignments described above shall be distributed to them by the ABL Agent in accordance with their respective ratable shares of the various ABL Obligations.

(f) Such purchase shall be made pursuant to assignment documentation in the form of Exhibit **[__]** to the ABL Credit Agreement; it being understood and agreed that the ABL Agent and each other ABL Secured Party shall retain all rights to indemnification as provided in the relevant ABL Documents pursuant to the provisions of this Section 3.

(g) Contemporaneously with the consummation of such purchase, the ABL Agent shall resign as the "Agent" under the ABL Documents and the Senior Note Agent (or such other Person as the Senior Note Secured Parties shall designate) or the Junior Note Agent (or such other Person as the Junior Note Secured Parties shall designate), as applicable, shall be designated as the successor "Agent" under the ABL Documents. Each Grantor hereby consents to such resignation and appointment of the successor "Agent" under the ABL Documents. All ABL Obligations in excess of the Maximum ABL Principal Obligations, including the Excess ABL Debt, shall continue to be secured by the Collateral in accordance with the terms of the ABL Documents, and the ABL Agent and the ABL Lenders shall retain all rights to receive payments in respect thereof subject to the terms of this Section 3.1.

3.2. ABL Obligations Purchase Option Timing.

(a) The Senior Note Secured Parties shall exercise the purchase option described in Section 3.1 by providing the ABL Agent on behalf of the ABL Lenders and the Junior Note Agent not less than five (5) Business Days' prior written notice of their exercise thereof, which notice, (i) once given, shall be irrevocable and fully binding on the respective Senior Note Secured Party or Senior Note Secured Parties, and (ii) shall specify a date of purchase not less than five (5) Business Days, nor more than ten (10) Business Days, after the date of the receipt by the ABL Agent of such notice. Neither the ABL Agent nor any ABL Secured Party shall have any disclosure obligation to the Senior Note Agent or any other Senior Note Secured Party in connection with any exercise of such purchase option.

(b) Prior to exercising the purchase option described in Section 3.1, the Junior Note Secured Parties shall provide the Senior Note Agent on behalf of the Senior Note Secured Parties not less than ten (10) Business Days' prior written notice of their intent to exercise such purchase option. If the Senior Note Secured Parties send notice of the exercise of the purchase option pursuant to Section 3.2(a) within such ten (10) Business Day period, the Junior Note Secured Parties may not exercise the purchase option pursuant to this Section 3.2. If, after the Senior Note Agent receives such notice of intent to exercise such purchase option from the Junior Note Secured Parties, the Senior Note Secured Parties do not send a notice of the exercise of their purchase option pursuant to Section 3.2(a), the Junior Note Secured Parties may exercise the purchase option described in Section 3.1. Any purchase by the Junior Note Secured Parties pursuant to this Section 3.2(b) shall be made by providing the ABL Agent on behalf of the ABL Lenders and the Senior Note Agent not less than five (5) Business Days' prior written notice of their exercise thereof (which five (5) Business Days shall be in addition to the ten (10) Business Days' notice required with respect to the Senior Note Agent), which notice, (i) once given, shall be irrevocable and fully binding on the respective Junior Note Secured Party(s), and (ii) shall specify a date of purchase not less than five (5) Business Days, nor more than ten (10) Business Days, after the date of the receipt by the ABL Agent of such notice. Neither the ABL Agent nor any ABL Secured Party shall have any disclosure obligation to the Junior Note Agent or any other Junior Note Secured Party in connection with any exercise of such purchase option.

3.3. ABL Obligations Purchase Option Triggering Events. The right to purchase the ABL Obligations as described in this Section 3 may be exercised by giving the irrevocable written notice described in preceding Section 3.2 at any time from and after the date of the occurrence of any of the following: (a) an Event of Default has occurred and is continuing under the ABL Documents and the revolving loan commitment under the ABL Credit Agreement has been terminated, suspended or reduced by ABL Agent (if such reduction results in less availability under the ABL Credit Agreement than was available to the Grantors prior to such reduction by ABL Agent) for a period of more than five (5) consecutive Business Days, (b) the maturity of the ABL Obligations has been accelerated pursuant to a written notice delivered by the ABL Agent to the Borrower or any other Grantor based on an ABL Default, (c) the ABL Agent shall have commenced, or shall have notified the Senior Note Agent and the Junior Note Agent that it intends to commence, the Exercise of Any Secured Creditor Remedies with respect to any Collateral, or shall have commenced, or shall have notified the Senior Note Agent and the Junior Note Agent that it intends to commence, the exercise of any of its rights and remedies with respect to the Borrower and/or any other Grantor to collect the ABL Obligations, all in accordance with the ABL Documents, (d) an Event of Default has occurred and is continuing under the Senior Note Documents or Junior Note Documents, as applicable, and has not been waived in accordance with the terms of the Senior Note Documents or Junior Note Documents, as applicable, or (e) the commencement of an Insolvency or Liquidation Proceeding.

3.4. [Reserved].

3.5. [Reserved].

3.6. [Reserved].

3.7. Several Purchase Obligations. The obligations of the ABL Secured Parties to sell their respective ABL Priority Obligations under this Section 3 are several and not joint and several. To the extent any ABL Secured Party breaches its obligation to sell its ABL Priority Obligations under this Section 3 (a "Defaulting ABL Secured Party"), nothing in this Section 3 shall be deemed to require the ABL Agent or any other ABL Secured Party to purchase such Defaulting ABL Secured Party's ABL Priority Obligations for resale to the holders of Senior Note Obligations or Junior Note Obligations, as applicable, and in all cases, the ABL Agent and each other ABL Secured Party complying with the terms of this Section 3 shall not be deemed to be in default of this Agreement or otherwise be deemed liable for any action or inaction of any Defaulting ABL Secured Party; provided, that nothing in this Section 3.7 shall require any Senior Note Secured Party or any Junior Note Secured Party to purchase less than all of the ABL Priority Obligations.

3.8. Grantor Consent. Each Grantor irrevocably consents to any assignment effected to one or more Senior Note Secured Parties or Junior Note Secured Parties pursuant to this Section 3 (so long as they meet all eligibility standards contained in

all relevant Senior Note Documents or Junior Note Documents, as applicable, other than obtaining the consent of any Grantor to an assignment to the extent required by such ABL Documents and such assignment does not violate any applicable federal or state securities laws) for purposes of all Senior Note Documents or Junior Note Documents, as applicable, and hereby agrees that no further consent from such Grantor shall be required.

3.9. Notice of Exercise of Secured Creditor Remedies. In the absence of Exigent Circumstances, the ABL Agent agrees that it will use commercially reasonable efforts to give the other Collateral Agents five (5) Business Days' prior written notice of its intention to terminate the revolving loan commitment under the ABL Documents or commence the Exercise of Secured Creditor Remedies; provided, that in the event Exigent Circumstances then exist, the ABL Agent agrees that it will use commercially reasonable efforts to give the other Collateral Agents concurrent written notice of the termination of the revolving loan commitment or the commencement of any Exercise of Secured Creditor Remedies, but, in either event, the ABL Agent shall not have any liability for any failure to provide such notice. In the event that during such five (5) Business Day period, any Senior Note Secured Party or any Junior Note Secured Party, shall send to the ABL Agent the irrevocable written notice to exercise a purchase option as described above, the ABL Agent shall not, absent Exigent Circumstances, continue or commence any foreclosure or other action to sell or otherwise realize upon the ABL Priority Collateral or Note Priority Collateral, as applicable; provided, that the ABL Agent's forbearance shall terminate if the purchase and sale with respect to the ABL Priority Obligations provided for herein shall not have closed, and the ABL Agent shall not have received the purchase price described in the preceding Section 3.1(a), within ten (10) Business Days after the date of the receipt by the ABL Agent of such irrevocable written notice.

Section 4. Cooperation with respect to ABL Priority Collateral and Note Priority Collateral.

4.1. Access to Information. If any Collateral Agent takes actual possession of any documentation of a Grantor (whether such documentation is in the form of a writing or is stored in any data equipment or data record in the physical possession of such Collateral Agent), then upon request of the other Collateral Agent(s) and reasonable advance notice, such Collateral Agent will permit the other Collateral Agent(s) or its representative to inspect and copy such documentation.

4.2. Non-Exclusive License to Use Intellectual Property. In addition to and not in limitation of the provisions of this Section 4 for the purpose of enabling the ABL Agent and the ABL Secured Parties to Exercise any Secured Creditor Remedies at such time as the ABL Agent shall be lawfully entitled to do so,

(a) subject to the terms and conditions of this Section 4, the Senior Note Agent, each Senior Note Secured Party, the Junior Note Agent and each Junior Note Secured Party hereby (i) gives its written consent (given without any representation, warranty or obligation whatsoever) to the grant by the Borrower and the other Grantors to the ABL Agent and the ABL Secured Parties of a non-exclusive royalty-free license in the form of Exhibit C attached hereto (the "Closing Date License") and (ii) agrees that its Liens on the Note Priority Collateral shall be subject to the Closing Date License;

(b) to the extent that the Senior Note Agent, any Senior Note Holder, the Junior Note Agent or any Junior Note Lender has become the owner of any Intellectual Property of any Grantor through the Exercise of Secured Creditor Remedies and to the extent not prohibited by the terms of such Intellectual Property, such Senior Note Agent, the Senior Note Holder, the Junior Note Agent or the Junior Note Lender hereby grants to the ABL Agent, for itself and the benefit of the ABL Secured Parties, an irrevocable, non-exclusive royalty-free license (given without any representation, warranty or obligation whatsoever) to use any such Intellectual Property that is reasonably deemed necessary or desirable by the ABL Agent to sell, lease or otherwise dispose of or realize upon any ABL Priority Collateral. The license granted under this Section 4.2(b) shall continue for the period of one hundred eighty (180) days from the date the Senior Note Agent, any Senior Note Holder, the Junior Note Agent or any Junior Note Lender provides notice to the ABL Agent that the Senior Note Agent, any Senior Note Holder, the Junior Note Agent or any Junior Note Lender, as applicable, has become the owner of the Intellectual Property (the "License Period"); provided that for purposes of the sale or other Disposition of branded Inventory (including Inventory branded or stamped by the Grantors and Inventory branded or stamped by any ABL Secured Party pursuant to the license as described in the foregoing sentence) or Inventory produced utilizing any such Intellectual Property during the License Period, the license to use such Intellectual Property for purpose of the sale or other Disposition of such Inventory by the ABL Agent shall continue until the Disposition of such Inventory. If, at any time, the Senior Note Agent, any Senior Note Holder, the Junior Note Agent or any Junior Note Lender sells or transfers the Intellectual Property, the license shall continue for the License Period. The License Period shall be tolled during the pendency of any Insolvency or Liquidation Proceeding pursuant to which the ABL Agent, the

Senior Note Agent and the Junior Note Agent are effectively stayed from enforcing their rights and remedies with respect to the ABL Priority Collateral; and

(c) to the extent the ABL Agent is selling, leasing, or otherwise disposing of or realizing upon any ABL Priority Collateral that is subject to a licensing agreement between any Grantor and any third party not an Affiliate of any Grantor, the ABL Agent shall sell, lease or otherwise dispose of or realize upon any such ABL Priority Collateral in accordance with the terms and provisions of such licensing agreement.

4.3. Rights of Access and Use. In the event that any Senior Note Secured Party or any Junior Note Secured Party shall acquire control or possession of any of the Note Priority Collateral or shall, through the Exercise of Secured Creditor Remedies, sell any of the Note Priority Collateral to any third party (a "Third Party Purchaser"), the Senior Note Secured Parties and the Junior Note Secured Parties shall permit the ABL Agent (or require as a condition of such sale to the Third Party Purchaser that the Third Party Purchaser agree to permit the ABL Agent), at its option and in accordance with applicable law: (a) to enter any or all of the Note Priority Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of real property during normal business hours (i) in order to inspect, remove or take any action with respect to the ABL Priority Collateral or to enforce the ABL Agent's rights with respect thereto, including the examination and removal of the ABL Priority Collateral and the examination and duplication of the books and records of any Grantor related to the ABL Priority Collateral and use of systems and other computer processing equipment in connection therewith, (ii) to sell any or all of the ABL Priority Collateral, whether in bulk, in lots or to customers in the ordinary course of business or otherwise, (iii) otherwise for the purpose of shipping, storing, selling or otherwise handling, dealing with, assembling or disposing of, in any lawful manner, the ABL Priority Collateral, and/or (iv) to take commercially reasonable actions to protect, secure, and otherwise enforce the rights or remedies of the ABL Agent and/or the other ABL Secured Parties in and to the ABL Priority Collateral, such right to include the right to conduct one or more public or private sales or auctions thereon; and (b) to use any of the Note Priority Collateral under such control or possession (or sold to a Third Party Purchaser) (including, real property, equipment, machinery, fixtures, computers or other data processing equipment) to handle, deal with or dispose of any ABL Priority Collateral pursuant to the rights of the ABL Agent and the ABL Secured Parties as set forth in the ABL Documents, the UCC of any applicable jurisdiction, the PPSA or other applicable law, including those actions listed in Section 4.3(a) above. The Senior Note Secured Parties and the Junior Note Secured Parties shall not have any responsibility or liability for the acts or omissions of the ABL Agent or any ABL Secured Party (or any of their respective representatives, contractors, licensees or invitees), and the ABL Agent and the ABL Secured Parties (and any of their respective representatives, contractors, licensees or invitees) shall not have any responsibility or liability for the acts or omissions of any Senior Note Secured Party or any Junior Note Secured Party, in each case, arising in connection with such other Secured Party's use and/or occupancy of any of the Note Priority Collateral. The rights of the ABL Agent set forth in Sections 4.3(a) and 4.3(b) above as to the Note Priority Collateral shall be irrevocable and shall continue at the ABL Agent's option for a period (the "Access Period") of one hundred eighty (180) days for each respective parcel of real property from the earlier of (i) the date that the ABL Agent receives written notice from the Senior Note Agent or the Junior Note Agent that the Senior Note Agent or the Junior Note Agent has acquired possession or control of such Note Priority Collateral and (ii) the date the ABL Agent provides the Senior Note Agent or the Junior Note Agent with written notice of its intent to exercise rights and remedies under this Section 4.3 with respect to each such parcel of real property; provided, that if the Senior Note Agent or the Junior Note Agent has entered into an agreement for the sale of all or substantially all of the Note Priority Collateral consisting of real property and equipment at a location in a bona fide arm's length transaction with an unaffiliated person, the rights of the ABL Agent set forth in Sections 4.3(a) and (b) above at such location shall only continue until the later of (A) the date one hundred twenty (120) days after the date the ABL Agent receives written notice from the Senior Note Agent or the Junior Note Agent, as applicable, of such agreement, together with a copy thereof, as duly authorized, executed and delivered by the parties thereto or (B) the date that the proposed purchaser shall require as a condition of such sale that possession of the equipment and real property be given by the Senior Note Agent or the Junior Note Agent, as applicable, to such purchaser; provided, however, that in no event shall the rights of the ABL Agent set forth in Sections 4.3(a) and (b) above at such location exceed the applicable Access Period. The time periods set forth in Sections 4.2 and 4.3 above shall be tolled during the pendency of any Insolvency or Liquidation Proceeding pursuant to which the ABL Agent, the Senior Note Agent and the Junior Note Agent are effectively stayed from enforcing their rights and remedies with respect to the ABL Priority Collateral. In no event shall any of the Senior Note Secured Parties or the Junior Note Secured Parties take any action to interfere, limit or restrict the rights of the ABL Agent or any ABL Secured Party or the exercise of such rights by the ABL Agent or any ABL Secured Party to have access to or to use any of such Note Priority Collateral under such possession or control pursuant to Sections 4.2 and 4.3 prior to the expiration of such periods.

4.4. Grantor Consent. The Borrower and the other Grantors (a) consent to the performance by the Senior Note Secured Parties and the Junior Note Secured Parties of the obligations set forth in this Section 4 between each of them, on the one hand, and the ABL Agent, on the other hand, and (b) acknowledge and agree that they shall look to the ABL Agent (and not to any Senior Note Secured Party or any Junior Note Secured Party) for any accountability or liability in respect of any action taken or omitted by the ABL Agent or any other ABL Secured Party or its or any of their officers, employees, agents, successors or assigns in connection with or incidental to or in consequence of the aforesaid obligations under this Section 4, including any improper use or disclosure of any Intellectual Property by the ABL Agent or any other ABL Secured Party or its or any of their officers, employees, agents, successors or assigns or any other damage to or misuse or loss of any property of the Grantors as a result of any action taken or omitted by the ABL Agent or any other ABL Secured Party or its or any of their officers, employees, agents, successors or assigns, provided that nothing in this Section 4.4 shall so limit the Borrower and the other Grantors if any Senior Note Secured Party or any Junior Note Secured Party participated in any such actions, omission, improper uses or disclosures or in causing any such damage, misuse or loss. Performance by any Senior Note Secured Party or any Junior Note Secured Party, as applicable, of the undertakings in this Section 4 will not be deemed to be participation in any such actions, omissions, improper uses or disclosures or in causing any such damage, misuse or loss referenced in the prior sentence.

4.5. Reimbursement by ABL Agent and ABL Lenders. The ABL Agent and the ABL Secured Parties shall reimburse the Senior Note Agent, the Senior Note Secured Parties, the Junior Note Agent, the Junior Secured Parties and any Third Party Purchaser (but, in the case of any Third Party Purchaser, only to the extent the ABL Agent's and the ABL Secured Parties' access and use of the Note Priority Collateral continues after the sale of such Note Priority Collateral to such Third Party Purchaser) (collectively, the "Reimbursed Parties") for (a) any loss, liability, claim, damage or expense (including reasonable fees and expenses of legal counsel) arising out of any claim asserted by any third party to the extent resulting directly from any acts or omissions by the ABL Agent, any ABL Secured Party, or any of their respective agents or representatives, in connection with the exercise by any of them of the rights of access set forth in Section 4.3 above (in each case, solely to the extent not covered by insurance payable to the applicable Reimbursed Parties); except that, the ABL Agent and the ABL Secured Parties shall not have any obligation under this Section 4.5 to reimburse any of the Reimbursed Parties with respect to a matter covered hereby to the extent resulting from the gross negligence or willful misconduct of such Reimbursed Party as determined pursuant to a final, non-appealable order of a court of competent jurisdiction, (b) any damage to any Note Priority Collateral (including any damage to real property constituting Note Priority Collateral) to the extent caused by any act of the ABL Agent, any ABL Secured Party or any of their respective agents or representatives, and (c) any injury resulting from any release of hazardous materials on such real property or arising in connection with the investigation, removal, clean-up and/or remediation of any hazardous material at such real property to the extent caused directly by the access, occupancy, use or control of such real property by the ABL Agent, any ABL Secured Party, or any of their respective agents or representatives. In no event shall the ABL Agent or any ABL Secured Party have any liability to the Reimbursed Parties pursuant to this Section 4.5 or otherwise as a result of any condition on or with respect to the Note Priority Collateral existing prior to the date of the exercise by any of them of the rights of access set forth in this Section 4, and the ABL Agent or any ABL Secured Party shall have no duty or liability to maintain the Note Priority Collateral in a condition or manner better than that in which it was maintained (ordinary wear and tear excepted) prior to the access and/or use thereof by the ABL Agent or any ABL Secured Party.

4.6. Payments by the ABL Agent. During the actual occupation and control by the ABL Agent, any ABL Secured Party or any of their respective agents or representatives of any real property constituting Note Priority Collateral during the access and use period permitted by this Section 4, the ABL Agent shall be (a) obligated to pay to the Senior Priority Agent all utilities, taxes and all other maintenance and operating costs of such real property during any such period of actual occupation and control, but only to the extent a Grantor is not otherwise paying any such amounts, (b) obligated to maintain insurance for such real property, substantially similar to the insurance maintained by the Borrower or any Grantor on such real property, naming the Senior Note Agent and the Junior Note Agent, for the benefit of the Senior Note Secured Parties and the Junior Note Secured Parties, respectively, as mortgagees, loss payees and additional insureds, if such insurance is not otherwise in effect, and (c) obligated to repair at its expense any physical damage (ordinary wear and tear excepted) to such real property resulting from any act or omission of the ABL Agent, any ABL Secured Party or any of their respective agents or representatives pursuant to such access, occupancy, use or control of such equipment or real property, and to leave the premises in a condition substantially similar to the condition of such premises prior to the date of the commencement of such access, occupancy, use or control thereof. Notwithstanding anything to the contrary in this Section 4, in no event will ABL Agent or any ABL Secured Party be obligated to pay for any diminution in value of the Note Priority Collateral resulting solely from the absence

or removal of the ABL Priority Collateral from each applicable premises (other than for actual, physical damage caused by ABL Agent or ABL Secured Parties as described above). All amounts paid by ABL Secured Parties hereunder shall be added to the outstanding principal balance of the ABL Priority Obligations.

4.7. Effect Upon Discharge of Senior Note Priority Obligations. Upon the Discharge of Senior Note Priority Obligations, all references to the Senior Note Agent, the Senior Note Holders or the Senior Note Secured Parties in Sections 4.3 through 4.6 shall be deemed to refer and apply to the Junior Note Agent, the Junior Note Holders or the Junior Note Secured Parties, respectively.

Section 5. Application of Proceeds.

5.1. Application of Proceeds in Distributions by the Senior Note Agent.

(a) Note Priority Collateral. All Proceeds of Note Priority Collateral resulting from the Disposition of such Collateral pursuant to any Exercise of Secured Creditor Remedies (including a Default Disposition) or a Disposition during any Insolvency or Liquidation Proceedings, as and when received by the Senior Priority Agent, will be applied in the following order of application:

First, to the payment of all costs and expenses incurred by the Controlling Note Agent or any co-trustee or agent of the Controlling Note Agent in connection with any such collection, sale, foreclosure or other realization upon the Collateral in accordance with the terms of this Agreement and the applicable Note Documents;

Second, to the Controlling Note Agent for application to the payment of all outstanding Note Priority Obligations in such order as may be provided in the Notes Intercreditor Agreement in an amount sufficient to pay in full in cash all outstanding Note Priority Obligations;

Third, to the ABL Agent for application to the payment of all outstanding ABL Priority Obligations in such order as may be provided in the ABL Documents in an amount sufficient to pay in full in cash all outstanding ABL Priority Obligations (including the discharge or cash collateralization (at one hundred and three percent (103%) of the aggregate undrawn amount of all outstanding letters of credit, if any, constituting ABL Priority Obligations and the discharge or cash collateralization (at one hundred percent (100%) of the outstanding amount) of Bank Product Obligations, if any, constituting ABL Priority Obligations), plus such other amounts necessary to cause the Discharge of ABL Priority Obligations ;

Fourth to the Senior Note Agent for application to the payment of all Excess Senior Note Debt, in such order as may be provided in the Senior Note Documents in an amount sufficient to pay in full in cash all such obligations;

Fifth, to the Junior Note Agent for application to the payment of all Excess Junior Note Debt, in such order as may be provided in the Junior Note Documents in an amount sufficient to pay in full in cash all such obligations;

Sixth, to the ABL Agent for application to the payment of all Excess ABL Debt, in such order as may be provided in the ABL Documents in an amount sufficient to pay in full in cash all such obligations; and

Seventh, any surplus remaining after the payment in full in cash of the amounts described in the preceding clauses will be paid to the Borrower, or the applicable Grantor, as the case may be, its successors or assigns, or as a court of competent jurisdiction may direct.

The application of Proceeds pursuant to paragraphs '*First*' and '*Second*' above shall be subject to the Terms of the Notes Intercreditor Agreement.

(b) Sale of Non-Cash Proceeds. In connection with the application of Proceeds pursuant to Section 5.1(a), except as otherwise directed by the requisite lenders under the applicable Senior Priority Documents, the Senior Priority Agent may sell any non-Cash Proceeds of Senior Priority Collateral for cash prior to the application of the Proceeds thereof.

(c) Collections Applicable to ABL Priority Collateral. If the applicable Collateral Agent or any other Secured Party collects or receives any Proceeds of such foreclosure, collection or other enforcement that should have been applied in accordance with Section 5.2(a), whether after the commencement of an Insolvency or Liquidation Proceeding or otherwise, such Collateral Agent and such Secured Party will forthwith deliver the same to the Senior Priority Agent to be applied in accordance with Section 5.2(a).

5.2. Application of Proceeds in Distributions by the ABL Agent.

(a) ABL Priority Collateral. All Proceeds of ABL Priority Collateral resulting from the Disposition of such Collateral pursuant to any Exercise of Secured Creditor Remedies (including a Default Disposition) or a Disposition during any Insolvency or Liquidation Proceedings, as and when received by the Senior Priority Agent, will be applied in the following order of application:

First, to the payment of all costs and expenses incurred by the ABL Agent or any co-trustee or agent of the ABL Agent in connection with any such collection, sale, foreclosure or other realization upon the Collateral in accordance with the terms of this Agreement and the ABL Documents;

Second, to the ABL Agent for application to the payment of all outstanding ABL Priority Obligations in such order as may be provided in the ABL Documents in an amount sufficient to pay in full in cash all outstanding ABL Priority Obligations (including the discharge or cash collateralization (at one hundred and three percent (103%) of the aggregate undrawn amount) of all outstanding letters of credit, if any, constituting ABL Priority Obligations and the cash collateralization (at one hundred percent (100%) of the outstanding amount) of Bank Product Obligations, if any, constituting ABL Priority Obligations), plus such other amounts necessary to cause the Discharge of ABL Priority Obligations ;

Third, to the Controlling Note Agent for application to the payment of all outstanding Note Priority Obligations in such order as may be provided in the Notes Intercreditor Agreement in an amount sufficient to pay in full in cash all outstanding Note Priority Obligations;

Fourth, to the ABL Agent for application to the payment of all Excess ABL Debt, in such order as may be provided in the ABL Documents in an amount sufficient to pay in full in cash all such obligations, in an amount equal to the aggregate amount of such payment;

Fifth, to the Senior Note Agent for application to the payment of all Excess Senior Note Debt, in such order as may be provided in the Senior Note Documents in an amount sufficient to pay in full in cash all such obligations;

Sixth, to the Junior Note Agent for application to the payment of all Excess Junior Note Debt, in such order as may be provided in the Junior Note Documents in an amount sufficient to pay in full in cash all such obligations; and

Seventh, any surplus remaining after the payment in full in cash of the amounts described in the preceding clauses will be paid to the Borrower or the applicable Grantor, as the case may be, its successors or assigns, or as a court of competent jurisdiction may direct.

The application of Proceeds pursuant to the '*Third*' paragraph above shall be subject to the terms of the Notes Intercreditor Agreement.

(b) Sale of Non-Cash Proceeds. In connection with the application of Proceeds pursuant to Section 5.2(a), except as otherwise directed by the requisite lenders under the applicable Senior Priority Documents, the Senior Priority Agent may sell any non-Cash Proceeds of Senior Priority Collateral for cash prior to the application of the Proceeds thereof.

(c) Collections Applicable to Note Priority Collateral. If the applicable Collateral Agent or any other Secured Party collects or receives any Proceeds of such foreclosure, collection or other enforcement that should have been applied in accordance with Section 5.1(a), whether after the commencement of an Insolvency or Liquidation Proceeding or otherwise, such Collateral Agent and such Secured Party will forthwith deliver the same to the Senior Priority Agent to be applied in accordance with Section 5.1(a).

5.3. Tracing of and Priorities in Proceeds. Prior to the delivery of notice of the commencement of a Standstill Period with respect to the Collateral of a Grantor (unless an Insolvency or Liquidation Proceeding of such Grantor has been commenced and is continuing), (a) any Proceeds of ABL Priority Collateral of such Grantor used by any Grantor to acquire any Note Priority Collateral shall be treated as Note Priority Collateral, so long as such use of ABL Priority Collateral is otherwise not in violation of the terms of this Agreement or the ABL Documents and (b) any Proceeds of Note Priority Collateral of such Grantor used by any Grantor to acquire any ABL Priority Collateral shall be treated as ABL Priority Collateral, so long as such use of Note Priority Collateral is otherwise not in violation of the terms of this Agreement or the Senior Note Documents and the Junior Note Documents. Notwithstanding anything to the contrary contained in this Agreement, any Senior Note Document or any Junior Note Document, until the Discharge of ABL Priority Obligations occurs Senior Note Agent and Junior Note Agent, for itself and on behalf of the applicable Secured Parties, agrees that prior to the receipt of a Note Cash Proceeds Notice, and except with respect to Note Priority Collateral, or proceeds thereof reasonably identified in a Note Cash Proceeds Notice, the ABL Secured Parties are hereby permitted to treat all cash, cash equivalents, money, collections and payments deposited in or credited to any other Grantor's deposit account, collection account or other bank account or otherwise received by any ABL Secured Party as ABL Priority Collateral, and except as otherwise provided above, no such amounts deposited in or credited to any such accounts or received by any ABL Secured Party or applied to the ABL Obligations shall be subject to disgorgement or deemed to be held in trust for the benefit of the Note Secured Parties (and all claims of the Note Secured Parties to such amounts are hereby waived); provided, this consent shall not inure to the benefit of any of the Grantors or be deemed a waiver of or modification of any provision of the Senior Note Security Documents or any provisions of the Junior Note Security Documents, including any provision requiring application of such proceeds to repayment of the Senior Note Obligations or Junior Note Obligations, as applicable, or otherwise in the manner provided for in the Senior Note Security Documents or Junior Note Security Documents, as applicable, or any default or event of default that may result from any Grantor's failure to comply with such requirements.

5.4. Letters of Credit. Any distribution to be made in respect of undrawn amounts of letters of credit (whether by cash collateralization or otherwise) pursuant to Section 5.1 or Section 5.2 shall be made to the ABL Agent, to be retained in a separate account, for the ratable portion of the ABL Obligations consisting of such undrawn amounts of outstanding letters of credit, it being understood that (a) if any such letter of credit is drawn upon, the ABL Agent shall pay to the relevant ABL Lenders, on a ratable basis, the amount of cash held in such separate account in respect of such letter of credit and (b) if and to the extent that any such letter of credit shall expire or terminate undrawn or drawn only in part, the amount of cash held in such separate account therefor shall be applied as if it were a newly received amount to be applied in accordance with Section 5.1 or Section 5.2 (whichever was the applicable section for the original distribution of such amount to such separate account).

5.5. Allocation of Proceeds from Dispositions of ABL Priority Collateral and Note Priority Collateral. Notwithstanding anything contained in this Agreement to the contrary, in the event of any Disposition or series of related Dispositions that includes (i) the Capital Stock issued by a Grantor, or (ii) ABL Priority Collateral and Note Priority Collateral, including during any Insolvency or Liquidation Proceeding, then solely for purposes of this Agreement, unless otherwise agreed by ABL Agent and Senior Note Agent, the proceeds of any such Disposition shall be allocated to the ABL Priority Collateral in an amount not less than the sum of (A) the book value determined in accordance with GAAP, but not less than cost, of any ABL Priority Collateral consisting of inventory that is the subject of such Disposition (or, in the case of a Disposition of Capital Stock issued by a Grantor, any ABL Priority Collateral consisting of inventory in which such Grantor or its Subsidiaries has an interest), determined as of the date of such Disposition, (B) the book value determined in accordance with GAAP of any ABL Priority Collateral consisting of accounts that are the subject of such Disposition (or, in the case of a Disposition of Capital Stock issued by a Grantor, any ABL Priority Collateral consisting of accounts in which such Grantor or its Subsidiaries has an interest), determined as of the date of such Disposition, and (C) the fair market value of all other ABL Priority Collateral that is the subject of such Disposition (or, in the case of a Disposition of Capital Stock issued by a Grantor, any other ABL Priority Collateral in which such Grantor has an interest), determined as of the date of such Disposition.

Section 6. Miscellaneous.

6.1. Conflicts. Subject to Section 1.4, in the event of any conflict between the provisions of this Agreement and the provisions of the ABL Documents, the Senior Note Documents or the Junior Note Documents, the provisions of this Agreement shall govern and control. Each Secured Party acknowledges and agrees that the terms and provisions of this Agreement do not violate any term or provision of its respective ABL Documents, Senior Note Documents or Junior Note Documents.

6.2. Effectiveness; Continuing Nature of this Agreement; Severability.

(a) This Agreement shall become effective when executed and delivered by the parties hereto. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding but, as to any Grantor and the rights of the Secured Parties with respect thereto, shall not survive the effectiveness of any plan of reorganization adopted in connection therewith (subject to the terms of this Agreement with respect to any reorganization securities). Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to the Borrower or any other Grantor shall include the Borrower or such Grantor as debtor and debtor in possession and any receiver or trustee for the Borrower or such Grantor in any Insolvency or Liquidation Proceeding.

(b) This Agreement shall terminate and be of no further force and effect:

(i) (A) upon the Discharge of ABL Priority Obligations and payment in full in cash of the Excess ABL Debt, subject to the rights of the ABL Secured Parties under Section 6.17 or (B) upon both (1) the Discharge of Senior Note Priority Obligations and payment in full in cash of the Excess Senior Note Debt, subject to the rights of the Senior Note Secured Parties under Section 6.17 and (2) the Discharge of Junior Note Priority Obligations and payment in full in cash of the Excess Junior Note Debt, subject to the rights of the Junior Note Secured Parties under Section 6.17;

(ii) with respect to the Senior Note Agent, the other Senior Note Secured Parties and the Senior Note Obligations, upon the Discharge of Senior Note Priority Obligations and payment in full in cash of the Excess Senior Note Debt, subject to the rights of the Senior Note Secured Parties under Section 6.17; and

(iii) with respect to the Junior Note Agent, the other Junior Note Secured Parties and the Junior Note Obligations, upon the Discharge of Junior Note Priority Obligations and payment in full in cash of the Excess Junior Note Debt, subject to the rights of the Junior Note Secured Parties under Section 6.17.

6.3. Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the ABL Agent, the Senior Note Agent or the Junior Note Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time; provided, that any Additional Note Obligations Agent may become party hereto by execution and delivery of a Joinder Agreement in accordance with the provisions of Section 8.21. Notwithstanding the foregoing, the Borrower or any other Grantor shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent such amendment or modification seeks to impose affirmative obligations upon any applicable Grantor.

6.4. Information Concerning Financial Condition of the Borrower and its Subsidiaries. The Senior Priority Agent and the other Senior Priority Secured Parties, on the one hand, and the Junior Priority Agent and the other Junior Priority Secured Parties, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of each Borrower and its Subsidiaries and all endorsers and/or guarantors of the Senior Priority Obligations or the Junior Priority Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Senior Priority Obligations or the Junior Priority Obligations. The Senior Priority Agent and the other Senior Priority Secured Parties shall have no duty to advise the Junior Priority Agent or any other Junior Priority Secured Parties of information known to it or them regarding such condition or any such circumstances or otherwise. In the event

that either the Senior Priority Agent or any of the other Senior Priority Secured Parties, on the one hand, or the Junior Priority Agent or any of the other Junior Priority Secured Parties, on the other hand, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other party hereto, it or they shall be under no obligation (i) to make, and such informing party shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) to provide any additional information or to provide any such information on any subsequent occasion, (iii) to undertake any investigation or (iv) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

6.5. Submission to Jurisdiction; Waivers.

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 6.6; AND (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 6.5(b) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

6.6. Notices. All notices to the ABL Secured Parties, the Senior Note Secured Parties and the Junior Note Secured Parties permitted or required under this Agreement shall also be sent to the ABL Agent, the Senior Note Agent and the Junior Note Agent, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in Person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or United States mail. For the purposes hereof, the addresses of the parties hereto shall be as set forth beside each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

6.7. Further Assurances. The ABL Agent, on behalf of itself and the other ABL Secured Parties, the Senior Note Agent, on behalf of itself and the other Senior Note Secured Parties, the Junior Note Agent, on behalf of itself and the other Junior Note Secured Parties, and each Grantor agrees that each of them shall take such further action and shall execute (without recourse or warranty) and deliver such additional documents and instruments (in recordable form, if requested) as the ABL Agent, the Senior Note Agent or the Junior Note Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement. The parties hereto agree, subject to the other provisions of this Agreement upon request by the ABL Agent, the Senior Note Agent or the Junior

Note Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Priority Collateral and the Note Priority Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Documents, the Senior Note Documents and the Junior Note Documents.

6.8. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

6.9. Binding on Successors and Assigns. This Agreement shall be binding upon the parties hereto, the ABL Secured Parties, the Senior Note Secured Parties, the Junior Note Secured Parties and their respective successors and assigns.

6.10. Specific Performance. Each of the ABL Agent, the Senior Note Agent and the Junior Note Agent may demand specific performance of this Agreement. The ABL Agent, on behalf of itself and the other ABL Secured Parties, the Senior Note Agent, on behalf of itself and the other Senior Note Secured Parties, and the Junior Note Agent, on behalf of itself and the other Junior Note Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the ABL Agent, the Senior Note Agent or the Junior Note Agent, as the case may be.

6.11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

6.12. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy or other electronic method shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

6.13. Authorization; No Conflict. Each of the parties represents and warrants to all other parties hereto that the execution, delivery and performance by or on behalf of such party to this Agreement has been duly authorized by all necessary action, corporate or otherwise, does not violate any provision of law, governmental regulation, or any agreement or instrument by which such party is bound, and requires no governmental or other consent that has not been obtained and is not in full force and effect.

6.14. No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of the ABL Secured Parties, the Senior Note Secured Parties, the Junior Note Secured Parties, and each of their respective successors and assigns. Except as expressly provided in Section 6.3, no other Person shall have or be entitled to assert rights or benefits hereunder.

6.15. Provisions Solely to Define Relative Rights.

(a) The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of between the ABL Secured Parties, the Senior Note Secured Parties and the Junior Note Secured Parties. None of the Borrower, any other Grantor or any other creditor thereof shall have any rights hereunder (except as expressly provided in Section 6.3). Nothing in this Agreement is intended to or shall impair the obligations of the Borrower or any other Grantor to pay the ABL Obligations, the Senior Note Obligations and the Junior Note Obligations as and when the same shall become due and payable in accordance with their terms.

(b) Nothing in this Agreement shall relieve the Borrower or any Grantor from the performance of any term, covenant, condition or agreement on the Borrower's or any Grantor's part to be performed or observed under or in respect of any of the Collateral pledged by it or from any liability to any Person under or in respect of any of such Collateral or impose any obligation on

any Collateral Agent to perform or observe any such term, covenant, condition or agreement on the Borrower's or any Grantor's part to be so performed or observed or impose any liability on any Collateral Agent for any act or omission on the part of the Borrower or any Grantor relative thereto or for any breach of any representation or warranty on the part of the Borrower or any Grantor contained in this Agreement or any ABL Document, any Senior Note Document or any Junior Note Document, or in respect of the Collateral pledged by it. The obligations of the Borrower and each Grantor contained in this paragraph shall survive the termination of this Agreement and the discharge of the Borrower's or such Grantor's other obligations hereunder.

(c) Each of the Collateral Agents acknowledges and agrees that none of them has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of any ABL Document, any Senior Note Document or any Junior Note Document. Except as otherwise provided in this Agreement, each of the Collateral Agents will be entitled to manage and supervise its respective extensions of credit to each Borrower and its Subsidiaries in accordance with law and its usual practices, modified from time to time as it deems appropriate.

6.16. Additional Grantors. The Borrower and each other Grantor will cause each Person that becomes a Grantor under any ABL Document, any Senior Note Document or any Junior Note Document to consent to this Agreement, to execute and deliver to the parties hereto an Intercreditor Agreement Consent, whereupon such Person will be bound by the terms hereof applicable to the Grantors to the same extent as if it had executed and delivered a consent to this Agreement as of the date hereof. The Borrower and the other Grantors shall promptly provide each Collateral Agent with a copy of each Intercreditor Agreement Consent executed and delivered pursuant to this Section 6.16.

6.17. Avoidance Issues. If any ABL Secured Party, any Senior Note Secured Party or any Junior Note Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower or any other Grantor any amount (a "Recovery"), then such ABL Secured Party, such Senior Note Secured Party or such Junior Note Secured Party, as applicable, shall be entitled to a reinstatement of ABL Obligations, Senior Note Obligations or Junior Note Obligations, as applicable, with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery (except as the result of the effectiveness of a plan of reorganization adopted in an Insolvency or Liquidation Proceeding), this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement and, to the extent the ABL Obligations, the Senior Note Obligations or the Junior Note Obligations were decreased in connection with such payment which gave rise to the Recovery, the ABL Obligations, the Senior Note Obligations and the Junior Note Obligations, as applicable, shall be increased to such extent.

6.18. Intercreditor Agreement; Legends. This Agreement is the ABL Intercreditor Agreement referred to in the ABL Credit Agreement, the Senior Secured Note Agreement and the Junior Secured Note Agreement. Except as expressly set forth in Section 2.1(e) of this Agreement, nothing in this Agreement shall be deemed to subordinate the right of any Secured Party to receive payment under its Credit Agreement to the right of any other Secured Party to receive payment under its Credit Agreement (whether before or after the occurrence of an Insolvency or Liquidation Proceeding), it being the intent of the parties that this Agreement shall effectuate a subordination of Liens but not a subordination of Indebtedness. Notwithstanding anything to the contrary in this Agreement, the parties hereto acknowledge and agree that the rights and obligations of the Senior Note Secured Parties and the Junior Note Secured Parties are further governed by the Notes Intercreditor Agreement.

6.19. Subrogation. With respect to any payments or distributions in cash, property, or other assets that any Junior Priority Secured Party pays over to the Senior Priority Agent under the terms of this Agreement that creates a right of subrogation under applicable law, such Junior Priority Secured Party shall not assert or enforce any such rights of subrogation until the occurrence of the Discharge of Senior Priority Obligations with respect to the Senior Priority Obligations subject to such right of subrogation.

6.20. Reciprocal Rights. The parties agree that the provisions of Sections 2.1, 2.2, 2.3, 2.4(a), 2.4(b), 2.4(e), 2.4(f), 2.5(a), 2.5(b), 2.5(c), 2.5(d), 2.5(e), 2.5(f), 2.5(g), 2.5(h), 2.5(j), and 6.19 including, as applicable, the defined terms referenced therein (but only to the extent used therein), which govern the relationship, and certain rights, restrictions, and agreements, between the Senior Priority Secured Parties with respect to the Senior Priority Obligations, on the one hand, and the Junior Priority Secured Parties with respect to the Junior Priority Obligations, on the other hand, with respect to the ABL Priority Collateral subject to the Senior Note Security Documents shall apply to and govern, mutatis mutandis, the relationship between the Senior Priority Secured Parties with respect to the Senior Priority Obligations, on the one hand, and the ABL Secured Parties as the Junior Priority Secured Parties with respect to

the Excess ABL Debt, on the other hand. The parties further agree that the provisions of Sections 2.1, 2.2, 2.3, 2.4(a), 2.4(b), 2.4(e), 2.4(f), 2.5(a), 2.5(b), 2.5(c), 2.5(d), 2.5(e), 2.5(f), 2.5(g), 2.5(h), 2.5(j), and 6.19 including, as applicable, the defined terms referenced therein (but only to the extent used therein), which govern the relationship, and certain rights, restrictions, and agreements, between the Senior Priority Secured Parties with respect to the Senior Priority Obligations, on the one hand, and the Junior Priority Secured Parties with respect to the Junior Priority Obligations, on the other hand, with respect to the Note Priority Collateral subject to the ABL Security Documents shall apply to and govern, mutatis mutandis, the relationship between the Senior Priority Secured Parties with respect to the Senior Priority Obligations, on the one hand, and the Senior Note Secured Parties and the Junior Note Secured Parties as the Junior Priority Secured Parties with respect to the Excess Senior Note Debt or Excess Junior Note Debt, on the other hand.

6.21. Additional Note Obligations. Subject to the terms and conditions of this Agreement and each Financing Document, the Obligors will be permitted from time to time to designate as an additional holder of Senior Note Obligations and/or Junior Note Obligations hereunder each Person that is, or that becomes or is to become, the holder of any Additional Note Obligations (or the Additional Note Obligations Agent in respect of such Additional Note Obligations). Upon the issuance or incurrence of any such Additional Note Obligations:

(a) The Borrowers shall deliver to each of the Collateral Agents a certificate of an authorized officer stating that the applicable Borrowers and/or Guarantors intend to enter or have entered into an Additional Note Obligations Agreement and certifying that the issuance or incurrence of such Additional Note Obligations and the Liens securing such Additional Note Obligations are permitted by the ABL Documents, the Senior Note Documents, the Junior Note Documents and each then existing Additional Senior Note Obligations Agreement and Additional Junior Note Obligations Agreement. Each of the Additional Note Obligations Agents, the ABL Agent, the Senior Note Agent and the Junior Note Agent shall be entitled to rely conclusively on the determination of the Borrower that such issuance and/or incurrence is permitted under the ABL Documents, the Senior Note Documents, the Junior Note Documents and each then existing Additional Senior Note Obligations Agreement and Additional Junior Note Obligations Agreement if such determination is set forth in such officer's certificate delivered to the ABL Agent, the Senior Note Agent and the Junior Note Agent; provided, however, that such determination will not affect whether or not the Borrowers and the Guarantors have complied with their undertakings in the ABL Documents, the Senior Note Documents, the Junior Note Documents or any then existing Additional Senior Note Obligations Agreement or Additional Junior Note Obligation Agreement;

(b) the Additional Note Obligations Agent for such Additional Note Obligations shall execute and deliver to the ABL Agent, the Senior Note Agent and the Junior Note Agent a Joinder Agreement acknowledging that such Additional Note Obligations and the holders of such Additional Note Obligations shall be bound by the terms hereof to the extent applicable to the Secured Parties, and

(c) the ABL Agent and each existing Note Agent shall promptly enter into such documents and agreements (including amendments, restatements, amendments and restatements, supplements or other modifications to this Agreement) as the ABL Agent or any existing Note Agent (but no other ABL Secured Party or Note Secured Party) or the Additional Note Obligations Agent may reasonably request in order to provide to it the rights, remedies and powers and authorities contemplated hereby, in each case consistent in all respects with the terms of this Agreement; provided that, for the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, it is understood and agreed that any such amendment, restatement, amendment and restatement, supplement or other modification to this Agreement requested pursuant to this clause (c) may be entered into by the ABL Agent and the existing Note Agents without the consent of any other ABL Secured Party or Note Secured Party to effect the provisions of this Section 6.21 and may contain additional intercreditor terms applicable solely to the holders of such Additional Note Obligations *vis-à-vis* the holders of the relevant obligations hereunder or the holders of such Additional Note Obligations *vis-à-vis* the ABL Agent and the ABL Secured Parties or the Controlling Agent and the Note Secured Parties, as applicable.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Intercreditor Agreement to be executed by their respective officers or representatives as of the day and year first above written.

Address:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Email: [_____]

[_____],
as ABL Agent

By: _____

Name: _____

Title: _____

Signature Page to Intercreditor Agreement

Address:

_____
_____
_____
Telephone:
Telecopy:
Email:

[_____],
as Senior Note Agent

By: _____

Name: _____

Title: _____

Signature Page to Intercreditor Agreement

Address:

_____
_____
_____
Attention:
Telephone:
Telecopy:
Email:

[_____],
as Junior Note Agent

By: _____

Name: _____

Title: _____

Signature Page to Intercreditor Agreement

CONSENT

The undersigned hereby (a) acknowledge and consent to the terms of the Intercreditor Agreement and (b) have caused this Consent to be executed by their respective officers or representatives as of _____ __, 2021.

Notice Address for each Grantor:

c/o _____
_____
_____
Attention:
Facsimile:

BORROWERS:

[_____]

By: _____
Name:
Title:

Consent to Intercreditor Agreement

GUARANTORS:

[_____]

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

Consent to Intercreditor Agreement

EXHIBIT A
to Intercreditor Agreement

FORM OF
INTERCREDITOR AGREEMENT JOINDER

The undersigned, _____, a _____, hereby agrees to become party as [an ABL Agent] [a Senior Note Agent] [a Junior Note Agent] under the Intercreditor Agreement dated as of [_____ __, 2021] (the "Intercreditor Agreement") among [_____], as ABL Agent, [_____], as Senior Note Agent, and [_____], as Junior Note Agent, as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, for all purposes thereof on the terms set forth therein, and to be bound by the terms of the Intercreditor Agreement as fully as if the undersigned had executed and delivered the Intercreditor Agreement as of the date thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Intercreditor Agreement Joinder to be executed by their respective officers or representatives as of _____, 20__.

[_____]

By: _____
Name: _____
Title

EXHIBIT B
to Intercreditor Agreement

FORM OF
INTERCREDITOR AGREEMENT CONSENT

The undersigned hereby (a) acknowledge and consent to the terms of the Intercreditor Agreement dated as of _____ __, 2021 (the "Intercreditor Agreement") among [_____], as ABL Agent, [_____], as the Senior Note Agent, and [_____], as Junior Note Agent, as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, for all purposes on the terms set forth therein, (b) agree to be bound by the terms of the Intercreditor Agreement applicable to any of the Grantors under the Intercreditor Agreement as fully as if the undersigned had executed and delivered a consent to the Intercreditor Agreement as of the date thereof, and (c) have caused this Consent to be executed by their respective officers or representatives as of the _____ day of _____, ____.

[_____]

By: _____
Name: _____
Title

EXHIBIT C
to Intercreditor Agreement

LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS

For the purpose of enabling [_____], as Administrative Agent and Collateral Agent (in such capacity, the "ABL Agent") under that certain [_____], dated as of **[_____ __]**, 2021 (as the same may be amended, restated, supplemented, modified, refinanced, replaced or renewed from time to time, the "Revolving Credit Agreement"), by and among **[_____]**[9], the lenders party thereto (the "ABL Lenders"), and the ABL Agent, to enforce any Lien held by the ABL Agent upon any of the ABL Priority Collateral (as such terms are defined in the Intercreditor Agreement, dated as of even date herewith, by and among the ABL Agent, **[____]**, as Administrative Agent and Collateral Agent for itself and the Senior Note Holders (as defined therein) under the Senior Secured Note Agreement (as defined therein) (in such capacities and together with any successor agent, the "Senior Note Agent"), and **[____]**, as Administrative Agent and Collateral Agent for itself and the Junior Note Holders (as defined therein) under the Junior Secured Note Agreement (as defined therein) (in such capacities and together with any successor agent, the "Junior Note Agent"), the Borrower and the other Grantors, the "Intercreditor Agreement") and to the extent reasonably deemed necessary or desirable by the ABL Agent to sell, lease or otherwise dispose of or realize upon any of the ABL Priority Collateral, each of the Grantors hereby grant to the ABL Agent, for the benefit of the ABL Secured Parties, a non-exclusive royalty-free license to use any Intellectual Property (including any Proprietary Rights) now owned or hereafter acquired by the Grantors, and wherever the same may be located. The Grantors hereby

agree and acknowledge that no further performance is required of the ABL Agent under the terms of the license granted pursuant hereto and that this license shall not constitute an executory contract. Capitalized terms not otherwise defined herein shall have the meanings given thereto in the Intercreditor Agreement. This license shall expire and the grant herein shall be deemed terminated upon the expiration of the Access Period (as defined in the Intercreditor Agreement).

[9] Conform to final.

THIS LICENSE TO USE INTELLECTUAL PROPERTY RIGHTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

Dated: _____, 2021

BORROWERS:

[____]

By: _____
Name:
Title:

Title:

GUARANTORS:

[____]

By: _____
Name:
Title:

[____]

By: _____
Name:
Title:

Schedule 1
Certain Existing Indebtedness

1. The Financial support originally granted to FerroAtlántica, S.A.U. by the Ministry of Industry, Energy, and Tourism of Spain by Resolution of December 1, 2016 of the General Secretary for Industry and SMEs, under the order IET/619/2014, of April 11, and subrogated to Ferrosolar OpCo Group SL pursuant to the authorization of the General Secretary for Industry and SMEs on May 6, 2019 (the "Reindus loan")

2. Credit agreement dated July 26, 2013, as amended on January 23, 2015, between Silicio Ferrosolar, S.L.U. as borrower, Grupo Ferroatlantica S.A.U. as guarantor and el Centro Para el Desarollo Tecnológico Industrial as lender, and the credit agreement

dated May 13, 2014, as amended on July 17, 2014, between Silicio Ferrosolar, S.L.U. as borrower, Grupo Ferroatlantica S.A.U. as guarantor and el Centro Para el Desarollo Tecnológico Industrial as lender (the "Silicio FerroSolar loan")

3. FerroAtlantica del Cinca loan entered into on December 23, 2008

4. A loan agreement dated July 23, 2020 and entered into between BNP Paribas as lender and Ferropem S.A.S. as borrower, pursuant to which a state-guaranteed amount of €4,300,000 was made available to the borrower in a single draw which is to be repaid (together with a €21,500 guarantee fee) in a single payment at the maturity of the loan on July 23, 2021 (the "French COVID loan")

5. A loan agreement dated June 2, 2020 and entered into between Investissement Quebec as lender and Silicium Québec Société en Commandite and Silicium Québec Commandité Inc as the borrowers, pursuant to which an amount of (CAD)$7,000,000 plus additional hypothec of 20% was made available to the borrowers at no interest with repayment occurring after 36 months in 84 monthly instalments of (CAD)$83 340 each payable to the lender. (the "Quebec Silicon loan")

Schedule 2
Security Documents

A. **Canada**

Security Documents to be entered into on the Issue Date

1. Pledge Agreement entered into by GSM Netherlands B.V. as the initial pledgor in favour of GLAS Trust Corporation Limited with respect to a pledge over shares in QSIP Canada ULC.

2. General security agreement entered into between QSIP Canada ULC as the debtor and GLAS Trust Corporation Limited as the Security Agent.

3. Deed of Hypothec entered into by QSIP Canada ULC as grantor and GLAS Trust Corporation Limited as the hypothecary representative.

B. **France**

Security Documents to be entered into on the Issue Date

1. Securities Account Pledge Agreement entered into by, among others, Grupo FerroAtlantica S.A.U. as pledgor and GLAS Trust Corporation Limited with respect to the securities account opened in the name of Grupo FerroAtlantica S.A.U. and on which are recorded all the financial securities (*titres financiers*) issued by Ferropem S.A.S. and held by Grupo FerroAtlantica S.A.U.

2. Securities Account Pledge Agreement entered into by, among others, Kintuck SAS as pledgor and GLAS Trust Corporation Limited with respect to the securities account opened in the name of Kintuck SAS and on which are recorded all the financial securities (*titres financiers*) issued by Ferroglobe Manganese S.A.S. and held by Kintuck S.A.S.

3. Bank Accounts Pledge Agreement entered into by, among others, Ferropem S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the bank accounts listed therein.

4. Bank Accounts Pledge Agreement entered into by, among others, Ferroglobe Manganese S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the bank accounts listed therein.

5. Receivables Pledge Agreement entered into by, among others, Ferropem S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the receivables listed therein.

6. Receivables Pledge Agreement entered into by, among others, Ferroglobe Manganese S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the receivables listed therein.

7. Non-possessory Inventory Pledge Agreement entered into by, among others, Ferropem S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the inventory listed therein *provided that*, such security satisfies the requirements specified in paragraph 4(f) of the Agreed Security Principles.

8. Non-possessory Inventory Pledge Agreement entered into by, among others, Ferroglobe Manganese S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the inventory listed therein *provided that*, such security satisfies the requirements specified in paragraph 4(f) of the Agreed Security Principles.

9. Possessory Inventory Pledge Agreement entered into by, among others, Ferropem S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the inventory listed therein *provided that*, such security shall only be required to be perfected if the requirements specified in paragraph 6(m) of the Agreed Security Principles are satisifed.

10. Possessory Inventory Pledge Agreement entered into by, among others, Ferroglobe Manganese S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the inventory listed therein *provided that*, such security shall only be required to be perfected if the requirements specified in paragraph 6(m) of the Agreed Security Principles are satisifed.

Security Documents to be entered into on the Transaction Effective Date

1. Notarized Mortgage Agreement (*hypothèque*) to be entered into by, among others, Ferropem S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the real property listed therein *provided that*, such security satisfies the requirements specified in paragraph 4(i) of the Agreed Security Principles.

2. Notarized Mortgage Agreement (*hypothèque*) to be entered into by, among others, Ferroglobe Manganese S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the real property listed therein *provided that*, such security satisfies the requirements specified in paragraph 4(i) of the Agreed Security Principles.

Security Documents to be entered into 60 days after the Transaction Effective Date at the latest

1. Pledge of going concern agreement (*nantissement de fonds de commerce*) to be entered into by, among others, Ferropem S.A.S. as pledgor and GLAS Trust Corporation Limited as security agent with respect to the going concern (*fonds de commerce*) identified therein *provided that*, such security shall be required to be granted to the extent that the requirements specified in paragraphs 4(j) of the Agreed Security Principles are satisfied.

C. **The Netherlands**

Security Documents to be entered into on the Issue Date

1. Notarial Deed of Pledge of Shares. entered into by Globe Speciality Metals, Inc. as pledgor and GLAS Trust Corporation Limited as pledgee with respect to the shares in GSM Netherlands B.V.

2. Security Agreement entered into between GSM Netherlands B.V. as the pledgor and GLAS Trust Corporation Limited as pledgee with respect to account bank receivables, intra-group receivables, insurance receivables, third party receivables, movable assets and intellectual property rights.

3. Power of Attorney granted by GSM Netherlands B.V. to a Stibbe civil notary.

4. Power of Attorney granted by Globe Speciality Metals, Inc. to a Stibbe civil notary.

5. Power of Attorney granted by GLAS Trust Corporation Limited to a Stibbe civil notary.

D. **Norway**

Security Documents to be entered into on the Issue Date

1. Share Pledge Agreement entered into by Kintuck AS as pledgor and GLAS Trust Corporation Limited as pledgee and security agent with respect to the shares in Ferroglobe Mangan Norge AS.

2. Security Agreement entered into by Ferroglobe Mangan Norge AS as pledgor and GLAS Trust Corporation Limited as pledgee and security agent with respect to intercompany loans, accounts receivables, inventory, operating assets, real property and bank accounts.

E. **Spain**

Security Documents to be entered into on the Issue Date

1. Pledges Agreement over Quota Shares entered into by Grupo Ferroatlantica S.A.U. and Ferroatlantica Participaciones, S.L.U. as pledgors, Ferroatlantica Participaciones, S.L.U., Ferroatlantica de Boo S.L.U., Ferroatlantica de Sabon S.L.U., Ferroatlantica del Cinca S.L., Ferrosolar Opco Group, S.L. and Grupo Ferroatlantica de Servicios, S.L.U. as companies, and Global Trust Corporation Limited as pledgee and security agent, with respect to the shares in Ferroatlantica Participaciones, S.L.U., Ferroatlantica de Boo S.L.U., Ferroatlantica de Sabon S.L.U., Ferroatlantica del Cinca S.L., Ferrosolar Opco Group, S.L. and Grupo Ferroatlantica de Servicios, S.L.U.

2. Pledges Agreement over Shares entered into by Ferroglobe Holding Company, Ltd and Ferroatlantica Participaciones, S.L.U. as pledgors, Grupo Ferroatlantica S.A.U. and Cuarzos Industriales, S.A.U. as companies, and Global Trust Corporation Limited as pledgee and security agent, with respect to the shares in Grupo Ferroatlantica S.A.U. and Cuarzos Industriales, S.A.U.

3. Pledges Agreement over Credit Rights entered into by Ferropem, S.A.S., Grupo Ferroatlantica S.A.U., Cuarzos Industriales S.A.U., Ferroatlantica de Boo S.L.U., Ferroatlantica de Sabon S.L.U., Grupo Ferroatlantica de Servicios S.L.U., Ferroatlantica del Cinca, S.L., Ferroatlantica Participaciones S.L.U., Ferrosolar OPCO Group S.L. as pledgors and Global Trust Corporation Limited as pledgee and security agent with respect to the bank accounts listed therein.

4. Real Estate Promissory Mortgage entered into by Ferroatlantica de Boo S.L.U., Ferroatlantica de Sabon S.L.U., Ferroatlantica del Cinca, S.L. and Ferrosolar OPCO Group S.L. as the promisors and Global Trust Corporation Limited as mortgagee and security agent.

5. Non-Possessory Pledge Agreement over Inventory entered into between Cuarzos Industriales S.A.U. as pledgor and Global Trust Corporation Limited Limited as pledgee and security agent with respect to the inventory listed therein.

6. Non-Possessory Pledge Agreement over Inventory entered into between Ferroatlantica de Boo S.L.U. as pledgor and Global Trust Corporation Limited Limited as pledgee and security agent with respect to the inventory listed therein.

7. Non-Possessory Pledge Agreement over Inventory entered into between Ferroatlantica de Sabon S.L.U. as pledgor and Global Trust Corporation Limited Limited as pledgee and security agent with respect to the inventory listed therein.

8. Non-Possessory Pledge Agreement over Inventory entered into between Ferroatlantica del Cinca, S.L. as pledgor and Global Trust Corporation Limited Limited as pledgee and security agent with respect to the inventory listed therein.

9. Non-Possessory Pledge Agreement over Inventory entered into between Ferrosolar Opco Group S.L. as pledgor and Global Trust Corporation Limited Limited as pledgee and security agent with respect to the inventory listed therein.

10. Pledges Agreement over Credit Rights entered into by Grupo Ferroatlantica S.A.U., Cuarzos Industriales S.A.U., Ferroatlantica de Boo S.L.U., Ferroatlantica de Sabon S.L.U., Grupo Ferroatlantica de Servicios S.L.U., Ferroatlantica del Cinca, S.L., Ferroatlantica Participaciones S.L.U., and Ferrosolar OPCO Group S.L. as pledgors and Global Loan Agency Services Limited as pledgee and security agent with respect to intragroup receivables held vis-à-vis other Ferroglobe PLC subsidiaries.

Security Documents to be entered into on or before the Transaction Effective Date at the latest

1. Mortgage entered into by Ferroatlantica de Boo S.L.U., Ferroatlantica de Sabon S.L.U., Ferroatlantica del Cinca, S.L. and Ferrosolar OPCO Group S.L. as the mortgagors and Global Trust Corporation Limited as mortgagee and security agent over their real estate property and/or public concessions (as applicable), *provided that*, in case the mortgage is to be granted over a public concession, the mortgage will only be required to be granted to the extent that the requirements specified in paragraphs 4(h) and (j) of the Agreed Security Principles are satisfied.

Security Documents to be entered into 60 days after the Transaction Effective Date at the latest

1. Real estate mortgages (*hipoteca inmobiliaria*) over mining concessions at Sonia, Conchitina, Segunda Esmeralda, Trasmonte, Merlan, Cristina and Cabenetas to be entered into by Cuarzos Industriales S.A.U. and Ferroatlantica del Cinca, S.L. as mortgagors and Global Loan Agency Services Limited as mortgagee and security agent, *provided that* such security shall only be required to be granted to the extent that the requirements specified in paragraph 4(j) of the Agreed Security Principles are satisfied.

2. Movable asset mortgages (*hipoteca mobiliaria*) over leaseholds at Madrid to be entered into by Grupo Ferroatlantica de Servicios S.L.U. as mortgagor and Global Loan Agency Services Limited as mortgagee and security agent, *provided that* such security shall only be required to be granted to the extent that the requirements specified in paragraph 4(j) of the Agreed Security Principles are satisfied.

F. **England & Wales**

Debenture entered into between Ferroglobe PLC, Ferroglobe Finance Company, PLC, Ferroglobe Holding Company, Ltd and GLAS Trust Corporation Limited.

G. **United States**

Security Documents to be entered into on the Issue Date

1. Pledge Agreement entered into by and among the Ferroglobe Holding Company Ltd. and GLAS Trust Corporation Limited

2. Pledge and Security Agreement entered into by and among Globe Specialty Metals, Inc., Globe Metallurgical Inc., Alden Resources LLC, ARL Resources LLC, ARL Services LLC, Core Metals Group Holdings LLC, Core Metals Group LLC, Metalurgical Process Materials, LLC, Tennessee Alloys Company, LLC, Alabama Sand and Gravel, Inc., GSM Sales, Inc. Gatliff Services LLC, GSM Financial Inc., Solsil, Inc., GSM Alloys I Inc., GSM Allows II Inc., Globe Metals Enterprises LLC, GBG Holdings LLC, Alden Sales Corp LLC, GSM Enterprises LLC, GSM Enterprises Holdings Inc., Norchem, Inc. and GLAS Trust Corporation Limited.

3. Patent Security Agreement by and among Globe Metallurgical Inc. and GLAS Trust Corporation Limited.

Owned Properties

1. the Open-End Mortgage (First Lien), Assignment of Rents and Leases, Security Agreement and Fixture Filing relating to 1595 Sparling Road, Waterford, Washington County, Ohio 45786.

2. the First Lien Mortgage, Security Agreement and Fixture Filing relating to 2401 Old Montgomery Highway, Selma, Dallas County, Alabama 36703.

3. the First Lien Mortgage, Security Agreement and Fixture Filing relating to 101 Garner Road, Bridgeport, Jackson County, Alabama 35740.

4. the First Lien Mortgage, Security Agreement and Fixture Filing relating to 133 Franklin Street, Aurora, Dearborn County, Indiana 47001.

5. the First Lien UCC-1 Fixture Filing relating to 1595 Sparling Road, Waterford, Washington County, Ohio 45786.

6. the First Lien UCC-1 Fixture Filing relating to 2401 Old Montgomery Highway, Selma, Dallas County, Alabama 36703.

7. the First Lien UCC-1 Fixture Filing relating to 101 Garner Road, Bridgeport, Jackson County, Alabama 35740.

8. the First Lien UCC-1 Fixture Filing relating to 133 Franklin Street, Aurora, Dearborn County, Indiana 47001.

Security Documents to be entered into 60 days after the Transaction Effective Date at the latest

1. Control Agreement (as defined in the Pledge and Security Agreement referred to in Section G.2 above) by and among Globe Specialty Metals, Inc., GLAS Trust Corporation Limited and Citizens Bank, N.A. in respect of Account #6238670197.

2. Control Agreement (as defined in the Pledge and Security Agreement referred to in Section G.2 above) by and among Globe Specialty Metals, Inc., GLAS Trust Corporation Limited and Citizens Bank, N.A. in respect of Account #6302618189.

3. Control Agreement (as defined in the Pledge and Security Agreement referred to in Section G.2 above) by and among Globe Specialty Metals, Inc., GLAS Trust Corporation Limited and PNC Bank, National Association in respect of Account #8026437506.

Leased Properties

1. the First Lien Collateral Assignment of Lease relating to 3714 County Road 40 E, Lowndesboro, Alabama 36752 *provided that*, such security shall only be required to be granted to the extent that the requirements specified in paragraph 4(j) of the Agreed Security Principles are satisfied.

2. the First Lien Collateral Assignment of Lease relating to 600 Brickell Ave, Suite 3100, Miami, Florida 33131 *provided that*, such security shall only be required to be granted to the extent that the requirements specified in paragraph 4(j) of the Agreed Security Principles are satisfied.

9. the First Lien Collateral Assignment of Lease relating to 985-A Seaway Drive, Fort Pierce, Florida 34949 *provided that*, such security shall only be required to be granted to the extent that the requirements specified in paragraph 4(j) of the Agreed Security Principles are satisfied.

Schedule 3
Agreed Security Principles

1 Agreed Security Principles

(a) The guarantees and security to be provided under the Notes Documents will be given in accordance with the security principles set out in this Schedule 3 (*Agreed Security Principles*). This Schedule 3 identifies the Agreed Security Principles and determines the extent and terms of the guarantees and security proposed to be provided in relation to the Notes.

(b) Capitalised terms used in this Schedule 3 but not otherwise defined in this Agreement shall have the meanings given in the Intercreditor Agreement.

2 Guarantees

Subject to the guarantee limitations set out in the Notes Documents, each guarantee will be an upstream, cross-stream and downstream guarantee for all liabilities of the Issuer and the Guarantors under the Notes Documents in accordance with, and subject to, the requirements of these Agreed Security Principles in each relevant jurisdiction (references to "**security**" to be read for this purpose as including guarantees).

3 Secured Liabilities

Security documents will secure the borrowing and guarantee obligations of the Issuer and each Guarantor respectively under the Notes Documents, in each case in accordance with, and subject to, the requirements of these Agreed Security Principles in each relevant jurisdiction.

4 Overriding Principle

The parties agree that the overriding intention is for security only to be granted by:

(a) the Parent over shares owned by it in the capital of Ferroglobe Holding Company, Ltd ("**Holdco**");

(b) Holdco over shares owned by it in the capital of the Issuer;

(c) the Parent and the Restricted Subsidiaries in each case over the shares owned by it in the capital of any Guarantor that is incorporated in any European jurisdiction (a "**European Guarantor**");

(d) The Parent, Holdco, the Issuer and the European Guarantors in each case over its bank accounts other than:

(i) the bank accounts of Grupo Ferroatlantica at Caixa Bank and Bankinter (or any replacement accounts thereof) used to hold amounts for certain guarantees; and

(ii) the landfill account, FX account and tax deduction account of Ferroglobe Mangan Norge AS (or any replacement accounts thereof);

(e) the Issuer and the European Guarantors in each case over intercompany receivables:

(i) arising as a result of cash pooling arrangements and tolling agreements between the European Guarantors;

(ii) arising in connection with the corporate reorganization or new money borrowing; and

(iii) that can be pledged under the relevant governing law in accordance with the general principles set out in these Agreed Security Principles;

(f) each European Guarantor in each case over its inventory (with respect to European Guarantors incorporated in France, to the extent stored in France);

(g) the Issuer and each European Guarantor (other than, without prejudice to paragraphs (h) to (j) below, those incorporated in France or Spain) over its real property, moveable machinery and plant and equipment;

(h) the Parent (if applicable) and each relevant European Guarantor, by way of promissory mortgage in respect of real property and concessions linked to real property, over the real property, moveable machinery and plant and equipment at the sites at Boo, Monzon, Sabon and Puertollano provided that, to the extent any such asset is a concession, such security will only be required to be granted to the extent that the requirements specified in sub-paragraphs (i) to (iii) of paragraph (j) below are satisfied;

(i) the Parent (if applicable) and each relevant Restricted Subsidiary over the real property, moveable machinery and plant and equipment at the sites at Laudun, Les Clavaux, Chateau Feuillet, Pierrefitte, Anglefort, Montricher and Dunkirk (provided that such security shall be limited to mortgage (*hypothèque*) over real property owned by them);

(j) the Parent (if applicable) and each relevant Restricted Subsidiary over its rights in respect of (x) the Sonia, Conchitina, Segunda, Esmeralda, Trasmonte, Merlan, Cristina and Cabenetas mine concessions (which security shall be by way of mortgage); (y) the Chambery and Madrid leaseholds (which security shall be by way of pledge and provided that with respect to the Chambery leasehold, the security shall be a pledge of going concern (*fonds de commerce*) pursuant to articles L.142-1 of the French *Code de commerce* and to the extent (i) limited to the going concern operated in Chambery premises and (ii) limited the items listed in article L.142-2 al. 3 of the same code but excluding any trademarks and similar rights); and (z) the Prattville, AL, Miami, FL and Ft Piece, FL leaseholds (which security shall be by way of collateral assignment), provided that such security shall only be required to be granted to the extent that:

(i) consent has been granted by the relevant lessor or administrative authority for the granting of such security, it being agreed herein that neither the Parent, nor any Restricted Subsidiary shall have any obligation other than to use its reasonable endeavours to obtain such consent;

(ii) the fees, costs and expenses relating to the perfection of such security (and the compliance with the requirements of that security) are not disproportionate to the benefit obtained by the Secured Parties (as defined in the Intercreditor Agreement); and

(iii) the granting of such security (and compliance with the requirements thereof) would not unduly disrupt the business of the relevant security provider);

(k) each Restricted Subsidiary in each case over the shares owned by it in the capital of each of GSM Financial Inc., Globe Metallurgical Inc,. GSM Sales Inc., Solsil Inc., GSM Alloys I Inc., GSM Alloys II Inc., Globe Metals Enterprises LLC, Globe Specialty Metals Inc, Core Metals Group Holdings LLC, Core Metals Group LLC, Metallurgical Process Materials LLC, Tennessee Alloys Company LLC, Alabama Sand and Gravel Inc., Norchem Inc., GBG Holdings LLC, Alden Resources LLC, Alden Sales Corp LLC, Gatliff Services LLC, ARL Resources LLC, ARL Services LLC, GSM Enterprises LLC, GSM Enterprises Holdings Inc., QSIP Canada ULC and GSM Netherlands BV;

(l) the Parent (if applicable) and each relevant Restricted Subsidiary over, by way of legal mortgage (first liens and second liens, if applicable), the real property at the Beverly (Waterford, OH), Selma (Selma, AL), Bridgeport (Bridgeport, AL) and Aurora (Aurora, IN) sites; and

(m) any Guarantor incorporated in Norway over its trade receivables,

(the "**Overriding Principle**") and that no other security shall be required to be given by any other person or in relation to any other asset provided that:

(A) a Guarantor incorporated or otherwise formed in the United States of America (including the District of Columbia), Canada or the Netherlands will also grant customary all asset security over its personal property and such security shall be subject to the terms of these Agreed Security Principles;

(B) a Guarantor incorporated or otherwise formed in the United States of America (including the District of Columbia), Canada or the Netherlands will also grant, following its acquisition of any real property, customary security on such real property and such security shall be subject to the terms of these Agreed Security Principles;

(C) the Issuer and each Guarantor incorporated in the United Kingdom or any other jurisdiction that recognises a floating charge (or equivalent security) will also grant a floating charge;

(D) if the date by which any security is required to be granted is expressly specified in the Lock-up Agreement, then that security shall not be required to be granted until that date, notwithstanding anything to the contrary in these Agreed Security Principles or in the relevant security document; and

(E) to the extent security in any category referred to in this paragraph 4 is granted on or before the Issue Date, any future security under the same category shall, subject to these Agreed Security Principles, be on the same terms unless otherwise required by law in order for the relevant security to be valid, effective and enforceable.

5 Governing Law and Jurisdiction of Security

(a) All security (other than share security) will be governed by the law of, and secure only assets located in, the jurisdiction of incorporation or formation of the applicable grantor of the security, provided that with respect to any company incorporated in the United States of America, all security agreements shall by governed by the laws of the State of New York and with respect to any Guarantor incorporated or otherwise formed in Canada, all security agreements shall be governed by the laws of the province of Nova Scotia, provided that a hypothec governed by the laws of the Province of Quebec shall also be entered into if such Guarantor has its registered office or tangible property located in the Province of Quebec, which security agreements and hypothec shall secure assets located in Canada.

(b) Share security over any subsidiary will be governed by the law of the place of incorporation or other formation of that subsidiary or, to the extent applicable, the place of incorporation or other formation of the financial intermediary with which the relevant shares are deposited, provided that with respect to share security over any company incorporated or otherwise formed in the United States of America, all share security shall be governed by the laws of the State of New York and with respect to share security over any company incorporated or otherwise formed in Canada, all share security shall be governed by the laws of the province in which such subsidiary has its registered office unless such subsidiary has its registered office in the Province of Quebec, in which case a hypothec governed by the laws of the Province of Quebec shall govern the share security.

6 Terms of security documents

The following principles will be reflected in the terms of any security taken in connection with the Facilities:

(a) the security will be first ranking to the extent possible unless otherwise agreed;

(b) security will not be enforceable until the occurrence of an Acceleration Event (or, in the case of Security governed by French law, until the occurrence of an Event of Default under paragraphs (a) and/or (b) of section 6.01 (*Event of Default*) of the Indenture which is continuing or the delivery of a notice of acceleration under section 6.03 (*Acceleration*) of the Indenture);

(c) the beneficiaries of the security or any agent will only be able to exercise a power of attorney following the occurrence of an Event of Default which is continuing or where the relevant security provider has failed to comply with a written request to fulfil a further assurance or perfection obligation;

(d) notices to account banks shall not request the account bank to amend or waive the standard terms and conditions of the account bank and any acknowledgement provided by an account bank shall be permitted to include a permission for

any prior security interests in favour of the account bank created or arising by operation of law or in its standard terms and conditions;

(e) unless a security document specifies a later date, notices and other perfection steps are to be completed within five (5) Business Days after the date of the security document (or the date on which any security provider becomes a party to that security document);

(f) in relation to any asset which a security provider does not own on the date of a security document (or the date on which the security provider becomes a party to that security document) including the opening of a new bank account, any notices or other perfection steps shall, the Company shall ensure that, unless a security document specifies a later date, any notice, document, certificate or other requirement required to be sent, deposited or completed in respect of that asset in accordance with the terms of the relevant security document is sent, deposited or completed as soon as reasonably practicable after the relevant asset is acquired by the relevant security provider;

(g) until an Event of Default has occurred and is continuing, the security providers shall be permitted to retain and to exercise voting rights to any shares secured by them in a manner which does not materially adversely affect the validity or enforceability of the Security or cause an Event of Default to occur and the security providers shall be permitted to receive and retain dividends on secured shares/pay dividends upstream on secured shares;

(h) the security documents should only operate to create security rather than to impose new commercial obligations or repeat clauses in other Notes Documents; accordingly:

(i) they should not contain additional representations, undertakings or indemnities unless these are the same as or consistent with those contained in this Agreement or are required for the creation, perfection, protection, preservation or maintenance of security; and

(ii) notwithstanding anything to the contrary in any security document, the terms of a security document shall not operate or be construed so as to prohibit or restrict any transaction, matter or other step (or a grantor of security taking or entering into the same) or dealing in any manner whatsoever in relation to any asset with the exception of ULC Shares (as such term is defined below) (including all rights, claims, benefits, proceeds and documentation, and contractual counterparties in relation to such assets) the subject of (or expressed to be the subject of) the security document if not prohibited by the Notes Documents;

(i) security will, where possible and practical, automatically create security over future assets of the same type as those already secured;

(j) where local law requires supplemental pledges or stock transfer powers, unless the relevant security document specifies otherwise, lists of assets or notices to be delivered in respect of future acquired assets in order for effective security to be created over that class of asset, such supplemental pledges or notices, such lists of assets shall be delivered to the Security Agent promptly upon request by the Security Agent;

(k) to the extent possible under applicable law, each security document must contain a clause which records that if there is a conflict between the security document and this Agreement or the Intercreditor Agreement then (to the fullest extent permitted by law) the provisions of this Agreement or (as applicable) the Intercreditor Agreement will take priority over the provisions of the security document with the exception of any provision of the security document specifically relating to shares of stock or membership interests issued by any unlimited company or unlimited liability company ("**ULC Shares**");

(l) if the date by which any security is required to be perfected, registered or stamped is expressly specified in the Lock-up Agreement, then that security shall not be required to be perfected, registered or stamped until that date, notwithstanding anything to the contrary in these Agreed Security Principles; and

(m) the security referred to in sub-paragraph (f) of paragraph 4 of these Agreed Security Principles shall, to the extent possessory security granted by a Guarantor incorporated in France, only be required to be perfected if:

(i) the fees, costs and expenses relating to the perfection of such possessory security (and the compliance with the requirements of that security) are not disproportionate to the benefit obtained by the Secured Parties (as defined in the Intercreditor Agreement); and

(ii) the perfection of such possessory security (and compliance with the requirements thereof) would not unduly disrupt the business of the relevant security provider,

and any such perfection shall not be required to be completed until the date falling 60 days after the Transaction Effective Date.

7 Additional Principles

The Agreed Security Principles embody the recognition by all parties that there may be certain legal and practical difficulties in obtaining effective or commercially reasonable guarantees and/or security from the Parent and all relevant Restricted Subsidiaries in each jurisdiction in which it has been agreed that guarantees and security will be granted by those members. In particular:

(a) general legal and statutory limitations, regulatory restrictions, financial assistance, anti-trust and other competition authority restrictions, corporate benefit, fraudulent preference, equitable subordination, "transfer pricing", "thin capitalisation", "earnings stripping", "controlled foreign corporation" "fiscal unity requirements" and other tax restrictions, "exchange control restrictions", "capital maintenance" rules and "liquidity impairment" rules, tax restrictions, retention of title claims, employee consultation or approval requirements and similar principles may limit the ability of the Parent or its Restricted Subsidiaries to provide a guarantee or security or may require that the guarantee or security be limited as to amount or otherwise and, if so, the guarantee or security will be limited accordingly, provided that, to the extent requested by the Security Agent before signing any applicable security or accession document, the Parent or relevant Restricted Subsidiary shall use its best efforts to overcome any such obstacle or otherwise such guarantee or security document shall be subject to such limit;

(b) a key factor in determining whether or not (and the terms of which) a guarantee or security will be taken (and in respect of the security, the extent of its perfection and/or registration) is the applicable time and cost (including adverse effects on taxes, interest deductibility, stamp duty, registration costs and taxes, notarial and registration costs, translation costs, guarantee fees payable to any person that is not the Parent or a Restricted Subsidiary and all applicable legal and notarial fees and adverse effects on the ability of the Parent or any Restricted Subsidiary to obtain or maintain local facilities or other financing arrangements, including any factoring or similar arrangement (in each case not prohibited by this Agreement) which will not be disproportionate to the benefit accruing to the Secured Parties (as defined in the Intercreditor Agreement) of obtaining such guarantee or security;

(c) the Parent and its Restricted Subsidiaries will not be required to give guarantees or enter into security documents if it would conflict with the fiduciary or statutory duties of their directors or contravene any applicable legal or regulatory prohibition or restriction or have the potential to result in a material risk of personal or criminal liability for any director or officer of or for the Parent or any Restricted Subsidiary, provided that, to the extent requested by the Security Agent before signing any applicable security document or accession document, the Parent or relevant Restricted Subsidiary shall, in relation to a contractual prohibition or restriction only, use reasonable endeavours to overcome any such obstacle or otherwise such guarantee or security document shall be subject to such limit;

(d) guarantees and security (and/or the maximum guaranteed or secured amount thereunder) will be limited so that the aggregate of notarial costs and all registration and relevant taxes and duties relating to the provision of security will not exceed an amount to be agreed between the Issuer and the Security Agent;

(e) where a class of assets to be secured includes material and immaterial assets, if the cost of granting security over the immaterial assets is disproportionate to the benefit of such security, security will be granted over the material assets only;

(f) it is expressly acknowledged that it may be either impossible or impractical to create security over certain categories of assets in which event security will not be taken over such assets;

(g) the giving of a guarantee, the granting of security and the registration and/or the perfection of the security granted will not be required if it would have a material adverse effect on the ability of the Parent or the relevant Restricted Subsidiary to conduct its operations and business in the ordinary course as otherwise permitted by the Notes Documents;

(h) any security document will only be required to be notarised if required by law in order for the relevant security to become effective or admissible in evidence;

(i) to the extent possible or legally effective, all security will be given in favour of the Security Agent and not the Secured Parties (as defined in the Intercreditor Agreement) individually (with the Security Agent to hold one set of security documents for all the Noteholders); "*parallel debt*" provisions will be used where necessary (and included in the Intercreditor Agreement and not the individual security documents);

(j) no security may be provided on terms which are inconsistent with the turnover or sharing provisions in the Intercreditor Agreement;

(k) no guarantee or security shall guarantee or secure any "Excluded Swap Obligations" defined in accordance with the LSTA Market Advisory Update dated February 15, 2013 entitled "Swap Regulations' Implications for Loan Documentation", and any update thereto by the LSTA;

(l) other than a general security document and related filing, no perfection, filing or other action will be required with respect to assets of a type not owned by members of the Group; and

(m) no translation of any document relating to any security or any asset subject to any security will be required to be prepared or provided to the Secured Parties (as defined in the Intercreditor Agreement), unless required for such documents to become effective or admissible in evidence.

Exhibit 99.3

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weil.com

Execution version

17 May 2021

INTERCREDITOR AGREEMENT

between

GLAS TRUSTEES LIMITED
as Original Super Senior Note Trustee

FERROGLOBE PLC
as Parent

GLAS TRUST CORPORATION LIMITED
acting as Security Agent

and others

TABLE OF CONTENTS

THIS AGREEMENT is made on 17 May 2021 between the following parties

(1) **GLAS TRUSTEES LIMITED** as note trustee in respect of the Original Super Senior Notes (the "**Original Super Senior Note Trustee**");

(2) **FERROGLOBE PLC**, a public company incorporated under the laws of England & Wales with registration number 09425113 (the "**Parent**");

(3) **THE COMPANIES** named on the signing pages as Intra-Group Lenders;

(4) **THE COMPANIES** named on the signing pages as Debtors (the "**Original Debtors**"); and

(5) **GLAS TRUST CORPORATION LIMITED** as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**1992 ISDA Master Agreement**" means the Master Agreement (Multicurrency - Cross Border) as published by the International Swaps and Derivatives Association, Inc.

"**2002 ISDA Master Agreement**" means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

"**ABL Intercreditor Agreement**" means the intercreditor agreement to be entered into between, among others, the Original Super Senior Note Trustee (as senior note agent), any Senior Secured Note Trustee (as junior note agent) and the ABL Agent (as defined therein).

"**ABL Collateral**" has the meaning given to the term "Collateral" in the ABL Intercreditor Agreement.

"**ABL Note Priority Collateral**" has the meaning given to the term "Note Priority Collateral" in the ABL Intercreditor Agreement.

"**ABL Priority Collateral**" has the meaning given to the term "ABL Priority Collateral" in the ABL Intercreditor Agreement.

"**Acceleration Event**" means a Senior Secured Debt Acceleration Event or a Super Senior Debt Acceleration Event.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Agreed Security Principles**" has the meaning given to that term in the Original Super Senior Note Indenture.

"**Ancillary Document**" means each document relating to or evidencing the terms of an Ancillary Facility.

"**Ancillary Facility**" means any ancillary facility made available under and in accordance with a Facility Agreement.

"**Ancillary Lender**" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility.

"**Appropriation**" means the appropriation, foreclosure or similar process of the shares in the capital of a member of the Group by the Security Agent (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security provided always that the Security Agent has agreed to such appropriation or similar process and noting that the Security Agent is not obliged to exercise any right to appropriate under any circumstances.

"**Arranger**" means each Senior Secured Facility Arranger and each Super Senior Facility Arranger, in each case, which becomes a Party as an Arranger pursuant to Clause 22.10 (*Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities*) or Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*), as the case may be.

"**Automatic Early Termination**" means the termination or close-out of any hedging transaction prior to the maturity of that hedging transaction which is brought about automatically by the terms of the relevant Hedging Agreement and without any party to the relevant Hedging Agreement taking any action to terminate that hedging transaction.

"**Available Commitment**", in relation to any Lender, has the meaning given to the term "Available Commitment" (or any substantially equivalent term) in the relevant Facility Agreement to which that Lender is party.

"**Bail-In Action**" means the exercise of any Write-down and Conversion Powers.

"**Bail-In Legislation**" means:

(a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;

(b) in relation to any state other than such an EEA Member Country or the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and

(c) in relation to the United Kingdom, the UK Bail-In Legislation.

"**Borrower**" means a "Borrower" under and as defined in the relevant Facility Agreement.

"**Borrowing Liabilities**" means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to an Arranger or a Creditor Representative) or a Debtor in respect of Liabilities arising under the Debt Documents (whether incurred solely or jointly and including, without limitation,

liabilities and obligations as a borrower or an issuer under the Senior Secured Debt Documents and liabilities and obligations as a borrower or an issuer under the Super Senior Debt Documents).

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, New York and Dublin, Amsterdam and Madrid and:

(a) (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; and

(b) (in relation to any date for payment or purchase of euro) any TARGET Day.

"**Cash Cover**" means "cash cover" (or any substantially equivalent term) under and as defined in the relevant Facility Agreement.

"**Cash Cover Document**" means, in relation to any Cash Cover, any Debt Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that Cash Cover by the relevant Facility Agreement.

"**Charged Property**" means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Close-Out Netting**" means:

(a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) (Payments on Early Termination) of the 1992 ISDA Master Agreement before the application of any subsequent Set-off (as defined in the 1992 ISDA Master Agreement);

(b) in respect of a Hedging Agreement or a Hedging Ancillary Document based on a 2002 ISDA Master Agreement, any step involved in determining an Early Termination Amount (as defined in the 2002 ISDA Master Agreement) under section 6(e) (Payments on Early Termination) of the 2002 ISDA Master Agreement; and

(c) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, any step involved on a termination of the hedging transactions under that Hedging Agreement or Hedging Ancillary Document pursuant to any provision of that Hedging Agreement or Hedging Ancillary Document which has a similar effect to either provision referenced in paragraph (a) and paragraph (b) above.

"**Commitment**" means a Senior Secured Facility Commitment or a Super Senior Facility Commitment.

"**Common Assurance**" means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to any Agreed Security Principles, given to all the Secured Parties in respect of their Liabilities.

"**Common Currency**" means US dollars.

"**Common Currency Amount**" means, in relation to an amount, that amount converted (to the extent not already denominated in the Common Currency) into the Common Currency at the Security Agent's Spot Rate of Exchange on the Business Day prior to the relevant calculation.

"**Common Transaction Security**" means any Transaction Security which to the extent legally possible and subject to any Agreed Security Principles:

(a) is created in favour of the Security Agent as trustee or agent for the other Secured Parties in respect of their Liabilities; or

(b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or agent for the Secured Parties is created in favour of:

(i) all the Secured Parties in respect of their Liabilities; or

(ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties,

and which (subject to the terms of this Agreement) ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*).

"**Consent**" means any consent, approval, release or waiver or agreement to any amendment.

"**Consultation Period**" has the meaning given in Clause 13.10 (*Consultation period*).

"**Creditor Class**" means each of the following as separate classes of Primary Creditor:

(a) the Senior Secured Creditors; and

(b) the Super Senior Creditors.

"**Credit Related Close-Out**" means any Permitted Hedge Close-Out which is not a Non-Credit Related Close-Out.

"**Creditor/Creditor Representative Accession Undertaking**" means:

(a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*); or

(b) a Transfer Certificate, Assignment Agreement or Increase Confirmation (each as defined in the relevant Facility Agreement) provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*),

as the context may require, or

(c) in the case of an acceding Debtor which is expressed to accede as an Intra Group Lender in the relevant Debtor Accession Deed, that Debtor Accession Deed.

"**Creditor Representative**" means:

(a) in relation to the Original Super Senior Noteholders, the Original Super Senior Note Trustee; and

(b) in relation to any Senior Secured Noteholders, Super Senior Noteholders, Senior Secured Lenders or Super Senior Lenders, the person which has acceded to this Agreement as the Creditor Representative of those Senior Secured Noteholders, Super Senior Noteholders, Senior Secured Lenders or Super Senior Lenders pursuant to Clause 22.10 (*Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities*) or Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*), as the case may be.

"**Creditor Representative Amounts**" means fees, costs and expenses of a Creditor Representative payable to a Creditor Representative for its own account pursuant to the relevant Debt Documents or any engagement letter between a Creditor Representative and a Debtor (including any amount payable to a Creditor Representative by way of indemnity, remuneration or reimbursement for expenses incurred), and the costs incurred by a Creditor Representative in connection with any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the Debt Documents.

"**Creditors**" means the Primary Creditors, the Intra-Group Lenders and the Subordinated Creditors.

"**Debt Disposal**" means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to paragraphs (d) or (e) of Clause 15.1 (*Facilitation of Distressed Disposals*).

"**Debt Document**" means each of this Agreement, the Hedging Agreements, the Senior Secured Debt Documents, the Super Senior Debt Documents, any agreement evidencing the terms of the Subordinated Liabilities or the Intra-Group Liabilities and any other document designated as such by the Security Agent and the Parent.

"**Debtor**" means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 22 (*Changes to the Parties*).

"**Debtor Accession Deed**" means:

(a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*); or

(b) (only in the case of a member of the Group which is acceding as a borrower, issuer or guarantor under a Primary Debt Document) an accession document in the form required by the relevant Primary Debt Document (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*)).

"**Debtor Resignation Request**" means a notice substantially in the form set out in Schedule 3 (*Form of Debtor Resignation Request*).

"**Debtors' Intra-Group Receivables**" means, in relation to a member of the Group, any liabilities and obligations owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.

"**Default**" means an Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Debt Documents or any combination of any of the foregoing) be an Event of Default.

"**Defaulting Lender**" means, at any time, a Lender which is a "Defaulting Lender" (or any substantially equivalent term) under and as defined in the relevant Facility Agreement.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Discharge Date**" means Super Senior Discharge Date or the Senior Secured Discharge Date.

"**Designated Gross Amount**" means, in relation to a Multi-account Overdraft, the maximum aggregate gross debit balance of overdrafts that is permitted, at any time, to be outstanding under that Multi-account Overdraft.

"**Designated Net Amount**" means, in relation to a Multi-account Overdraft, the maximum aggregate net amount that is permitted, at any time, to be outstanding under that Multi-account Overdraft.

"**Distress Event**" means any of:

(a) an Acceleration Event; or

(b) the enforcement of any Transaction Security.

"**Distressed Disposal**" means an Appropriation or a disposal of any Charged Property which is:

(a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable;

(b) being effected by enforcement of the Transaction Security (including the disposal of any property of a Debtor or member of the Group, the shares in which have been subject to an Appropriation); or

(c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

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

"**Enforcement**" means the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 15 (*Distressed Disposals*), the giving of instructions as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event under Clause 9.7 (*Security Agent instructions*) and the taking of any other actions consequential on (or necessary to effect) any of those actions (but excluding the delivery of an Initial Enforcement Notice).

"**Enforcement Action**" means:

(a) in relation to any Liabilities:

(i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);

(ii) the making of any declaration that any Liabilities are payable on demand;

(iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);

(iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;

(v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability other than in connection with an asset sale offer or a change of control offer (however defined) as set out in the Senior Secured Debt Documents or the Super Senior Debt Documents) and excluding any such right which arises as a result of any debt buy-back which is not prohibited under any Primary Financing Document or any open market purchases of, or any voluntary tender offer or exchange offer for, Senior Secured Notes or Super Senior Notes in each case at a time at which no Default is continuing;

(vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:

(A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;

(B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;

(C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;

(D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or

(E) which is not prohibited under the Senior Secured Debt Documents and the Super Senior Debt Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and

(vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;

(b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (other than pursuant to a Permitted Automatic Early Termination);

(c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);

(d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 22 (*Changes to the Parties*), any debt buy-back which is not prohibited under any Facility Agreement or any open market purchases of, or voluntary tender offer or exchange offer for, Senior Secured Notes or Super Senior Notes in each case at a time at which no Default is continuing); or

(e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

(i) the taking of any action falling within paragraphs (a)(ii), (iii), (iv) and (vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and

(ii) a Primary Creditor bringing legal proceedings against any person solely for the purpose of:

(A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;

(B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or

(C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or

(iii) bringing legal proceedings against any person in connection with any fraud, securities violation or securities or listing regulations; or

(iv) allegations of material misstatements or omissions made in connection with the offering materials relating to any Notes or in reports furnished to any Noteholders or any exchange on which the any Notes are listed by a member of the Group pursuant to the information and reporting requirements under the relevant Debt Documents; or

(v) to the extent entitled by law, the taking of action against any creditor (or any agent, trustee or receiver acting on behalf of such creditor) to challenge the basis on which any sale or disposal is to take place pursuant to powers granted to such persons under any security documentation.

"**Enforcement Instructions**" means instructions as to Enforcement (including the manner and timing of Enforcement) given by the Majority Senior Secured Creditors or the Majority Super Senior Creditors to the Security Agent provided that instructions not to undertake Enforcement or an absence of instructions as to Enforcement shall not constitute "Enforcement Instructions".

"**Enforcement Proceeds**" means any amount paid to or otherwise realised by a Secured Party under or in connection with any Enforcement and, following the occurrence of a Distress Event, any other proceeds of, or arising from, any of the Charged Property.

"**Enforcement Realisation Period**" means, in relation to a Super Senior Event of Default, a period of 180 days from the date on which the Super Senior Enforcement Notice relating to that Super Senior Event of Default becomes effective in accordance with Clause 26.4 (*Delivery*).

"**EU Bail-In Legislation Schedule**" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"**Event of Default**" means any event or circumstance specified as such in a Note Indenture or a Facility Agreement.

"**Exposure**" has the meaning given to that term in Clause 18.1 (*Equalisation Definitions*).

"**Facility Agreement**" means a Senior Secured Facility Agreement or a Super Senior Facility Agreement.

"**Final Discharge Date**" means the later to occur of the Senior Secured Discharge Date and the Super Senior Discharge Date.

"**Financial Adviser**" means any:

(a) independent internationally recognised investment bank;

(b) independent internationally recognised accountancy firm; or

(c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or assets similar or comparable to those subject to the relevant Transaction Security or, where applicable, advising on competitive sales processes.

"**French Debtor**" means a Debtor incorporated under the laws of France.

"**French Hedging Guarantor**" means a Hedging Guarantor incorporated under the laws of France.

"**French Law Security**" means any Security created or evidenced or expressed to be created or evidenced under or pursuant to the French Law Security Documents.

"**French Law Security Documents**" means any Security Document governed by the laws of France.

"**Group**" means the Parent and each of its Restricted Subsidiaries for the time being.

"**Guarantee Liabilities**" means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to an Arranger or a Creditor Representative) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Secured Debt Documents and the Super Senior Debt Documents).

"**Hedge Credit Participation**" means, in relation to a Hedge Counterparty, the aggregate of:

(a) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement to the extent it constitutes a Hedging Liability that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement) and to the extent it is a Hedging Liability; and

(b) after the Senior Secured Debt Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement to the extent it constitutes a Hedging Liability that has, as of the date the calculation is made, not been terminated or closed out:

(i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or

(ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

"**Hedge Counterparty**" means any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 22.13 (*Creditor/ Creditor Representative Accession Undertaking*).

"**Hedging Agreement**" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a Debtor and a Hedge Counterparty for the purpose of hedging that the Parent confirms in writing to the Primary Creditors at the time at which it is entered into is permitted under the terms of the Primary Financing Documents (in their form as at the date of execution of the relevant Hedging Agreement) to share in the Transaction Security.

"**Hedging Ancillary Document**" means an Ancillary Document which relates to or evidences the terms of a Hedging Ancillary Facility.

"**Hedging Ancillary Facility**" means an Ancillary Facility which is made available by way of a hedging facility.

"**Hedging Ancillary Lender**" means an Ancillary Lender to the extent that that Ancillary Lender makes available a Hedging Ancillary Facility.

"**Hedging Force Majeure**" means:

(a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:

(i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or

(ii) an event similar in meaning and effect to a "**Force Majeure Event**" (as referred to in paragraph (b) below);

(b) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement); or

(c) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraphs (a) or (b) above.

"**Hedging Liabilities**" means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements.

"**Holding Company**" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"**Initial Enforcement Notice**" has the meaning given to such term in Clause 13.2 (*Instructions to enforce*).

"**Insolvency Event**" means, in relation to any member of the Group:

(a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group

(b) any composition, compromise, assignment or arrangement is made with any of its creditors;

(c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or

(d) any analogous procedure or step is taken in any jurisdiction and, in particular, in relation to any member of the Group having its center of main interests in Spain or incorporated or established under the laws of Spain:

(i) it files for insolvency with the relevant court in accordance with the Spanish Insolvency Act;

(ii) following a petition by a creditor, a declaration of insolvency by the relevant court in accordance with the Spanish Insolvency Act, based on any situation covered by article 2.4. of the Spanish Insolvency Act; or

(iii) the filing of a notice set out in article 583 of the Spanish Insolvency Act, a judicial or out-of-court composition agreement (*convenio de acreedores o propuesta anticipada de convenio*), the filing of a workout homologation petition (*solicitud de homologación de un acuerdo de refinanciación*), a refinancing agreement (*acuerdo de refinanciación*) or an out-of-court payment agreement (*acuerdo extrajudicial de pagos*) as well as any other proceeding set forth in the Spanish Insolvency Act.

"**Instructing Group**" means:

(a) subject to paragraph (b) below, the Majority Senior Secured Creditors and the Majority Super Senior Creditors; and

(b) in relation to instructions as to Enforcement, the group of Primary Creditors entitled to give instructions as to Enforcement under Clause 13.2 (*Instructions to enforce*).

"**Intercreditor Amendment**" means any amendment or waiver which is subject to Clause 28 (*Consents, Amendments and Override*).

"**Inter-Hedging Agreement Netting**" means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross agreement netting agreement or otherwise) by a Hedge Counterparty against liabilities owed to a Debtor by that Hedge Counterparty under a Hedging Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Debtor under another Hedging Agreement.

"**Inter-Hedging Ancillary Document Netting**" means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross agreement netting agreement or otherwise) by a Hedging Ancillary Lender against liabilities owed to a Debtor by that Hedging Ancillary Lender under a Hedging Ancillary Document in respect of Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

"**Intra-Group Lending**" means the loans, credit or other financial arrangements made available by any Intra-Group Lender to another member of the Group.

"**Intra-Group Lenders**" means each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is named on the signing pages as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 22 (*Changes to the Parties*).

"**Intra-Group Liabilities**" means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders.

"**Lender**" means a Senior Secured Lender or a Super Senior Lender.

"**Lender Cash Collateral**" means any cash collateral provided by a Lender to an Issuing Bank pursuant to the terms of the relevant Facility Agreement.

"**ISDA Master Agreement**" means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.

"**Issuing Bank**" means any "Issuing Bank" (or any substantially equivalent term) under and as defined in a Facility Agreement.

"**Letter of Credit**" means any "Letter of Credit" (or any substantially equivalent term) under and as defined in a Facility Agreement.

"**Liabilities**" means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents or under any other Intra-Group Lending, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

(a) any refinancing, novation, deferral or extension;

(b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;

(c) any claim for damages or restitution; and

(d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"**Liabilities Acquisition**" means, in relation to a person and to any Liabilities, a transaction where that person:

(a) purchases by way of assignment or transfer;

(b) enters into any sub-participation in respect of; or

(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights in respect of those Liabilities.

"**Liabilities Sale**" means a Debt Disposal pursuant to paragraph (e) of Clause 15.1 (*Facilitation of Distressed Disposals*).

"**Lower Ranking Security**" means any Transaction Security which, as required under the applicable law of such Transaction Security, is expressed to be lower ranking than any other Transaction Security granted over the same assets.

"**Majority Senior Secured Creditors**" means, at any time, those Senior Secured Creditors whose Senior Secured Credit Participations at that time aggregate more than 50 per cent. of the total Senior Secured Credit Participations at that time.

"**Majority Super Senior Creditors**" means, at any time, those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate more than 50 per cent. of the total Super Senior Credit Participations at that time.

"**Multi-account Overdraft**" means an Ancillary Facility which is an overdraft facility comprising more than one account.

"**Multi-account Overdraft Liabilities**" means the Liabilities arising under any Multi-account Overdraft.

"**Non-Credit Related Close-Out**" means a Permitted Hedge Close-Out described in any of paragraphs (a)(i) or (a)(ii) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*).

"**Non-Distressed Disposal**" has the meaning given to that term in Clause 14 (*Non-Distressed Disposals*).

"**Note Indenture**" means a Senior Secured Note Indenture or a Super Senior Note Indenture.

"**Note Trustee**" means a Senior Secured Note Trustee or a Super Senior Note Trustee.

"**Noteholder**" means a Senior Secured Noteholder or a Super Senior Noteholder.

"**Notes**" means Senior Secured Notes or Super Senior Notes.

"**Original Super Senior Note Indenture**" means the indenture governing the Original Super Senior Notes dated on or about the date of this Agreement and made between, among others, the Original Super Senior Note Trustee, the Security Agent, the Super Senior Note Issuer and the Super Senior Note guarantors.

"**Original Super Senior Noteholders**" means any holder from time to time of any Original Super Senior Notes.

"**Original Super Senior Notes**" means:

(a) the 9.0% Super Senior Notes due 2025 issued or to be issued by the Super Senior Note Issuer pursuant to the Original Super Senior Note Indenture; and

(b) any other super senior notes issued by the Super Senior Note Issuer or any other member of the Group pursuant to the Original Super Senior Note Indenture provided that the Parent has confirmed in writing that the incurrence of those notes will not breach the terms of any of its existing Senior Secured Debt Documents or Super Senior Debt Documents.

"**Other Liabilities**" means, in relation to a member of the Group, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to a Subordinated Creditor, Intra-Group Lender or Debtor.

"**Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 19.3 (*Parallel Debt*).

"**Party**" means a party to this Agreement.

"**Payment**" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

"**Payment Netting**" means:

(a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on an ISDA Master Agreement, netting under section 2(c) of the relevant ISDA Master Agreement; and

(b) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, netting pursuant to any provision of that Hedging Agreement or a Hedging Ancillary Document which has a similar effect to the provision referenced in paragraph (a) above.

"**Permitted Automatic Early Termination**" means an Automatic Early Termination of a hedging transaction under a Hedging Agreement, the provision of which is permitted under Clause 5.12 (*Terms of Hedging Agreements*).

"**Permitted Gross Outstandings**" means, in relation to a Multi-account Overdraft, any amount, not exceeding its Designated Gross Amount, which is the aggregate amount of the gross debit balance of overdrafts comprised in that Multi-account Overdraft.

"**Permitted Hedge Close-Out**" means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*).

"**Permitted Hedge Payments**" means the Payments permitted by Clause 5.3 (*Permitted Payments: Hedging Liabilities*).

"**Permitted Intra-Group Payments**" means the Payments permitted by Clause 7.2 (*Permitted Payments: Intra-Group Liabilities*).

"**Permitted Senior Secured Debt Payments**" means the Payments permitted by Clause 4.1 (*Payment of Senior Secured Debt Liabilities*).

"**Permitted Subordinated Creditor Payments**" means the Payments permitted by Clause 8.2 (*Permitted Payments: Subordinated Liabilities*).

1.2 "**Permitted Super Senior Debt Payments**" means the Payments permitted by Clause 3.1 (*Payment of Super Senior Liabilities).*

"**Permitted Payment**" means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Secured Debt Payment, a Permitted Super Senior Debt Payment or a Permitted Subordinated Creditor Payment.

"**Primary Creditors**" means the Super Senior Creditors and the Senior Secured Creditors.

"**Primary Creditor Liabilities**" means the Super Senior Liabilities and the Senior Secured Liabilities.

"**Primary Debt Documents**" means the Hedging Agreements, the Senior Secured Debt Documents and the Super Senior Debt Documents.

"**Primary Financing Document**" means a Facility Agreement or a Notes Indenture.

"**Property**" of a member of the Group or of a Debtor means:

(a) any asset of that member of the Group or of that Debtor;

(b) any Subsidiary of that member of the Group or of that Debtor; and

(c) any asset of any such Subsidiary.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"**Recoveries**" has the meaning given to that term in Clause 17.1 (*Order of application*).

"**Relevant Ancillary Lender**" means, in respect of any Cash Cover, the Ancillary Lender (if any) for which that Cash Cover is provided.

"**Relevant Issuing Bank**" means, in respect of any Cash Cover, the Issuing Bank (if any) for which that Cash Cover is provided.

"**Relevant Liabilities**" means:

(a) in the case of a Creditor:

(i) the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor (as the case may be); and

(ii) all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent; and

(b) in the case of a Debtor, the Liabilities owed to the Creditors together with all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent.

"**Relevant Security Enforcement**" means any appropriation by, or attribution to, the relevant Secured Parties of any Charged Property as a result of the enforcement of any French Law Security.

"**Required Senior Secured Creditors**" means each Creditor Representative acting on behalf of the relevant proportion of Senior Secured Lenders on whose behalf it acts or the relevant proportion of Senior Secured Noteholders on whose behalf it acts.

"**Required Super Senior Creditors**" means each Creditor Representative acting on behalf of the relevant proportion of Super Senior Lenders on whose behalf it acts or the relevant proportion of Super Senior Noteholders on whose behalf it acts.

"**Restricted Subsidiary**" means a Subsidiary of the Parent other than an Unrestricted Subsidiary.

"**Resolution Authority**" means any body which has authority to exercise any Write-down and Conversion Powers.

"**Secured Obligations**" means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Primary Debt Documents (including to the Security Agent under the Parallel Debt pursuant to Clause 19.2 (*Parallel Debt*)), both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

"**Secured Parties**" means the Security Agent, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it (or, in the case of a Noteholder, its Creditor Representative) is a Party or has acceded to this Agreement in the appropriate capacity pursuant to Clause 22.10 (*Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities*) or Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*), as applicable.

"**Security**" means a mortgage, charge, pledge, lien, hypothec or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Agent's Spot Rate of Exchange**" means, in respect of the conversion of one currency (the "**First Currency**") into another currency (the "**Second Currency**"):

(a) the Security Agent's spot rate of exchange; or

(b) (if the Security Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Security Agent (acting reasonably),

for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day, which shall, in either case, be notified by the Security Agent in accordance with paragraph (e) of Clause 20.5 (*Duties of the Security Agent*).

"**Security Documents**" means:

(a) each of the Transaction Security Documents;

(b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and

(c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above.

"**Security Property**" means:

(a) the Transaction Security expressed to be granted in favour of the Secured Parties and/or the Security Agent as trustee or agent for the Secured Parties and/or under a parallel debt structure or equivalent structure for the benefit of all the Secured Parties and all proceeds of that Transaction Security;

(b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee or agent for the Secured Parties, or in its capacity as agent of the Secured Parties and in the interest, for the account and for the exclusive benefit of the Secured Parties, and/or under a parallel debt structure or equivalent structure for the benefit of all the Secured Parties, and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Secured Parties and/or the Security Agent as trustee or agent for the Secured Parties and/or under a parallel debt structure or equivalent structure for the benefit of all the Secured Parties;

(c) the Security Agent's interest in any trust fund created pursuant to Clause 11 (*Turnover of Receipts*); and

(d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust or as agent for (or otherwise for the benefit of) the Secured Parties.

"**Senior Secured Credit Participation**" means:

(a) in relation to a Hedge Counterparty, its aggregate Hedge Credit Participation; and

(b) in relation to a Senior Secured Noteholder or a Senior Secured Lender, the aggregate of:

(i) its aggregate Senior Secured Facility Commitments, if any;

(ii) the aggregate outstanding principal amount of the Senior Secured Notes held by it, if any; and

(iii) to the extent not falling within paragraphs (i) or (ii) above, the aggregate outstanding principal amount of any Senior Secured Debt Liabilities in respect of which it is the creditor, if any.

"**Senior Secured Creditors**" means the Senior Secured Debt Creditors and the Hedge Counterparties.

"**Senior Secured Debt Acceleration Event**" means:

(a) the Creditor Representative of any Senior Secured Noteholder(s) (or the requisite Senior Secured Noteholders) exercising any of its or their rights or any acceleration provisions being automatically invoked in each case under the relevant Senior Secured Note Indenture; or

(b) the Creditor Representative of any Senior Secured Lender(s) (or any of the other Senior Secured Lenders) exercising any of its or their rights or any acceleration provisions being automatically invoked in each case under the relevant Senior Secured Facility Agreement,

other than the right to declare any amount payable on demand.

"**Senior Secured Debt Creditors**" means each Senior Secured Facility Arranger, each Senior Secured Noteholder and each Senior Secured Lender (and in each case each Creditor Representative in respect thereof).

"**Senior Secured Debt Discharge Date**" means the first date on which all Senior Secured Debt Liabilities have been fully and finally discharged to the satisfaction of the Creditor Representative(s) in relation to any Senior Secured Debt Liabilities, whether or not as the result of an enforcement, and the Senior Secured Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Senior Secured Debt Documents.

"**Senior Secured Debt Documents**" means the Senior Secured Facility Documents and the Senior Secured Note Documents.

"**Senior Secured Debt Liabilities**" means the Liabilities owed by the Debtors to the Senior Secured Debt Creditors under or in connection with the Senior Secured Debt Documents.

"**Senior Secured Discharge Date**" means the first date on which all Senior Secured Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representative(s) (in the case of the Senior Secured Debt Liabilities) and each Hedge Counterparty (in the case of its Hedging Liabilities), whether or not as the result of an enforcement, and the Senior Secured Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

"**Senior Secured Facility**" means any credit facility made available to a member of the Group where any:

(a) agent of the lenders in respect of the credit facility becomes a Party as a Creditor Representative;

(b) lender in respect of the credit facility has become a Party as a Senior Secured Lender; and

(c) the arranger of the credit facility has become a Party as a Senior Secured Facility Arranger,

in respect of that credit facility pursuant to Clause 22.10 (*Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities*).

"**Senior Secured Facility Agreement**" means, in relation to a Senior Secured Facility, the facility agreement documenting that Senior Secured Facility.

"**Senior Secured Facility Documents**" means each Senior Secured Facility Agreement, any "Finance Document" (or substantially equivalent term) defined thereunder and this Agreement.

"**Senior Secured Facility Arranger**" means any arranger of a credit facility which creates or evidences any Senior Secured Debt Liabilities which becomes a Party pursuant to Clause 22.10 (*Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities*).

"**Senior Secured Facility Commitment**" means any "Commitment" under and as defined in a Senior Secured Facility Agreement.

"**Senior Secured Lender**" means, in relation to a Senior Secured Facility:

(a) each "Lender", "Issuing Bank" and "Ancillary Lender" in each case under and as defined in the relevant Senior Secured Facility Agreement; and

(b) each other lender, holder or other creditor in respect of that Senior Secured Facility.

"**Senior Secured Liabilities**" means the Senior Secured Debt Liabilities and the Hedging Liabilities.

"**Senior Secured Note Documents**" means each Senior Secured Note Indenture, the Senior Secured Notes, the Security Documents, the Senior Secured Note Guarantees (whether contained in the Senior Secured Note Indenture, as a notation of guarantee attached to the Senior Secured Notes or otherwise) and this Agreement.

"**Senior Secured Note Guarantees**" means each "Note Guarantee" (or substantially equivalent term) as defined in a Senior Secured Note Indenture.

"**Senior Secured Note Indenture**" means, in relation to any Senior Secured Notes, the note indenture setting out the terms of those Senior Secured Notes.

"**Senior Secured Note Issuer**" means Ferroglobe Finance Company PLC, a public company incorporated under the laws of England & Wales with registration number 13353128.

"**Senior Secured Note Trustee**" means, in relation to any Senior Secured Notes, the note trustee in respect of those Senior Secured Notes which has acceded to this Agreement as a Creditor Representative pursuant to Clause 22.10 (*Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities*).

"**Senior Secured Noteholder**" means any holder from time to time of any Senior Secured Notes.

"**Senior Secured Notes**" means any high yield notes, exchange notes or other debt securities issued or to be issued by the Senior Secured Note Issuer or any other member of the Group which the Parent has designated as such, and where the note trustee in respect of that issuance has become Party as a Senior Secured Note Trustee, in each case in accordance with Clause 22.10 (*Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities*).

"**Soulte**" means, in relation to any Relevant Security Enforcement occurring by way of appropriation (including pursuant to a *pacte commissoire* or any similar enforcement mechanism) or judicial foreclosure of any French Law Security Document, the amount by which the value of the Charged Property appropriated or foreclosed pursuant to that Relevant Security Enforcement

exceeds the amount of obligations secured by that French Law Security Document which is discharged as a result of that Relevant Security Enforcement being carried out.

"**Spanish Civil Code**" means the Spanish *Código Civil*, as amended from time to time.

"**Spanish Civil Procedure Act**" means Spanish Act 1/2000, dated 7 January, on Civil Procedure (*Ley de Enjuiciamiento Civil*), as amended from time to time.

"**Spanish Commercial Code**" means the Spanish Commercial Code published by virtue of the Royal Decree of 22 August 1885 (*Real decreto de 22 de agosto de 1885 por el que se publica el Código de Comercio*), as amended from time to time.

"**Spanish Insolvency Act**" means the Spanish Royal Legislative Decree 1/2020 dated 5 May 2020 approving the restated Spanish Insolvency Act, as amended from time to time.

"**Spanish Debtor**" means a Debtor incorporated under the laws of Spain.

"**Spanish Public Document**" means a *documento público*, being either an *escritura pública* or a *póliza o efecto intervenido por fedatario público*.

"**Spanish Royal Decree 5/2005**" means the Royal Decree Law 5/2005 of 11 March 2005 of urgent reforms for the productivity and for the improvement of the contracting public sector (*Real Decreto Ley 5/2005, de 11 de marzo, de reformas urgentes para el impulso de la productividad y para la mejora de la contratación pública*), as amended from time to time.

"**Spanish Security Document**" means a Transaction Security Document governed by the laws of Spain.

"**Structural Intra-Group Liabilities**" means the intra-group loans corresponding to the actual or deemed on-lending, directly or indirectly, of all or part of the proceeds of the Primary Creditor Liabilities to any French Debtor.

"**Structural Intra-Group Liabilities Lender**" means any lender under any Structural Intra-Group Liabilities.

"**Subsidiary**" has the meaning given to that term in the original form of the Original Super Senior Note Indenture.

"**Subordinated Creditor**" means each person which becomes Party as a Subordinated Creditor in accordance with the terms of Clause 22 (*Changes to the Parties*).

"**Subordinated Liabilities**" means all Liabilities owed by the Parent or any other Debtor to any Subordinated Creditor.

"**Super Senior Cash Discharge**" means:

(a) the payment (or repayment) in full and in cash; or

(b) in the case of any contingent Liability relating to a letter of credit (or similar), the making subject to cash collateral arrangements acceptable to the relevant Super Senior Creditor (acting reasonably),

of the Super Senior Lender Liabilities.

"**Super Senior Credit Participation**" means, in relation to Super Senior Noteholder or a Super Senior Lender, the aggregate of:

(a) its aggregate Super Senior Facility Commitments, if any;

(b) the aggregate outstanding principal amount of the Super Senior Notes held by it, if any; and

(c) to the extent not falling within paragraphs, (a) or (b) above, the aggregate outstanding principal amount of any Super Senior Liabilities in respect of which it is the creditor, if any.

"**Super Senior Creditors**" means each Super Senior Facility Arranger, each Super Senior Noteholder and each Super Senior Lender (and in each case each Creditor Representative in respect thereof).

"**Super Senior Debt Acceleration Event**" means:

(a) the Creditor Representative of any Super Senior Noteholder(s) (or the requisite Super Senior Noteholders) exercising any of its or their rights or any acceleration provisions being automatically invoked in each case under the relevant Super Senior Note Indenture; or

(b) the Creditor Representative of any Super Senior Lender(s) (or any of the other Super Senior Lenders) exercising any of its or their rights or any acceleration provisions being automatically invoked in each case under the relevant Super Senior Facility Agreement,

other than the right to declare any amount payable on demand.

"**Super Senior Debt Documents**" means the Super Senior Facility Documents and the Super Senior Note Documents.

"**Super Senior Discharge Date**" means the first date on which all Super Senior Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representative(s), whether or not as the result of an enforcement, and the Super Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

"**Super Senior Enforcement Notice**" means, in relation to a Super Senior Event of Default which has occurred and is continuing, a notice from the relevant Creditor Representative(s) (acting on the instructions of the Majority Super Senior Creditors) to the Security Agent specifying that such Super Senior Event of Default has occurred and is continuing.

"**Super Senior Event of Default**" means an Event of Default specified in a Super Senior Note Indenture or a Super Senior Facility Agreement.

"**Super Senior Facility**" means any credit facility made available to any member of the Group where any:

(a) agent of the lenders in respect of the credit facility becomes a Party as a Creditor Representative;

(b) lender in respect of the credit facility has become a Party as a Super Senior Lender; and

(c) the arranger of the credit facility has become a Party as a Super Senior Facility Arranger,

in respect of that credit facility pursuant to Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*).

"**Super Senior Facility Agreement**" means, in relation to a Super Senior Facility, the facility agreement documenting that Super Senior Facility.

"**Super Senior Facility Arranger**" means any arranger of a credit facility which creates or evidences any Super Senior Liabilities which becomes a Party pursuant to Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*).

"**Super Senior Facility Commitment**" means any "Commitment" under and as defined in a Super Senior Facility Agreement.

"**Super Senior Facility Documents**" means each Super Senior Facility Agreement, any "Finance Document" (or substantially equivalent term) defined thereunder and this Agreement.

"**Super Senior Lender**" means, in relation to a Super Senior Facility:

(a) each "Lender", "Issuing Bank" and "Ancillary Lender" in each case under and as defined in the relevant Super Senior Facility Agreement; and

(b) each other lender, holder or other creditor in respect of that Super Senior Facility.

"**Super Senior Liabilities**" means the Liabilities owed by the Debtors to the Super Senior Creditors under or in connection with the Super Senior Debt Documents.

"**Super Senior Liabilities Transfer**" means a transfer of the Super Senior Liabilities to some or all of the Senior Secured Creditors described in Clause 6.1 (*Option to purchase: Senior Secured Creditors*).

"**Super Senior Note Indenture**" means, in relation to any Super Senior Notes, the note indenture setting out the terms of those Super Senior Notes.

"**Super Senior Note Issuer**" means Ferroglobe Finance Company PLC, a public company incorporated under the laws of England & Wales with registration number 13353128.

"**Super Senior Note Trustee**" means:

(a) in relation to the Original Super Senior Notes: (i) the Original Super Senior Note Trustee or; (ii) any successor note trustee in respect of the Original Super Senior Notes which has acceded to this Agreement as a Creditor Representative pursuant to Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*); and

(b) in relation to any other Super Senior Notes, the note trustee in respect of those Super Senior Notes which has acceded to this Agreement as a Creditor Representative pursuant to Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*).

"**Super Senior Noteholder**" means any Original Super Senior Noteholder and any other holder from time to time of any Super Senior Notes.

"**Super Senior Notes**" means:

(a) the Original Super Senior Notes; and

(b) any other high yield notes, exchange notes or other debt securities issued or to be issued by the Super Senior Note Issuer or any other member of the Group which the Parent has designated as such, and where the note trustee in respect of that issuance has become Party as a Super Senior Note Trustee, in each case in accordance with Clause 22.11 (*Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities*).

"**Super Senior Note Documents**" mean each Super Senior Note Indenture, the Super Senior Notes, the Security Documents, the Super Senior Note Guarantees (whether contained in the Super Senior Note Indenture, as a notation of guarantee attached to the Super Senior Notes or otherwise) and this Agreement.

"**Super Senior Note Guarantees**" means each "Note Guarantee" (or substantially equivalent term) as defined in a Super Senior Note Indenture.

"**Super Senior Step-In Event**" means any event or circumstance specified as such in Clause 3.5 (*Super Senior Step-In Events*).

"**Tax**" has the meaning given to that term in the Original Super Senior Note Indenture and "**Taxes**" shall be construed accordingly.

"**TARGET2**" means the Trans-European Automated Real-Time Gross Settlement Express Transfer payment system which utilities a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payment in euro.

"**Transaction Security**" means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

"**Transaction Security Documents**" means:

(a) the Collateral (as that term is defined in the Original Super Senior Note Indenture); and

(b) any other document entered into by any Debtor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Debtors under any of the Primary Debt Documents.

"**UK Bail-In Legislation**" means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"**Unrestricted Subsidiary**" means a Subsidiary of the Parent which has been designated an "Unrestricted Subsidiary" for the purpose of (and in accordance with) all of the Super Senior Debt Documents and Senior Secured Debt Documents.

"**VAT**" means:

(a) any value added tax imposed by the Value Added Tax Act 1994;

(b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax as amended (EC Directive 2006/112); and

(c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

"**Write-down and Conversion Powers**" means:

(a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;

(b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:

(i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

(ii) any similar or analogous powers under that Bail-In Legislation; and

(c) in relation to any UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

1.3 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

(i) any "**Creditor Representative**", "**Ancillary Lender**", "**Arranger**", "**Creditor**", "**Debtor**", "**Hedge Counterparty**", "**Intra Group Lender**", "**Issuing Bank**", "**Senior Secured Facility Arranger**", "**Senior Secured Note Trustee**", "**Senior Secured Creditor**", "**Senior Secured Noteholder**", "**Parent**", "**Party**", "**Primary Creditor**", "**Security Agent**", "**Super Senior Facility Arranger**", "**Super Senior Note Trustee**", "**Super Senior Creditor**", "**Super Senior Noteholder**" or "**Subordinated Creditor**" shall be construed to be a reference to it in its capacity as such and not in any other capacity;

(ii) any "**Creditor Representative**", "**Ancillary Lender**", "**Arranger**", "**Creditor**", "**Debtor**", "**Hedge Counterparty**", "**Issuing Bank**", any "**Party**" or the "**Security Agent**" or "**Subordinated Creditor**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;

(iii) "**assets**" includes present and future properties, revenues and rights of every description;

(iv) a "Debt Document" or any other agreement or instrument is (other than a reference to a "Debt Document" or any other agreement or instrument in "original form") a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;

(v) "**enforcing**" (or any derivation) the Transaction Security includes:

(A) the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent; and

(B) the making of a demand under Clause 20.3 (*Parallel debt*) by the Security Agent;

(vi) a "**group of Creditors**" includes all the Creditors and a "**group of Primary Creditors**" includes all the Primary Creditors;

(vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(viii) the "**original form**" of a "Debt Document" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;

(ix) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

(x) "**proceeds**" of a Distressed Disposal or of a Debt Disposal includes proceeds in cash;

(xi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and

(xii) a provision of law is a reference to that provision as amended or re-enacted from time to time.

(b) Section, Clause and Schedule headings are for ease of reference only.

(c) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been remedied or waived.

(d) A Primary Creditor providing "**cash cover**" for a Letter of Credit means that Primary Creditor paying an amount in the currency of the Letter of Credit to an interest-bearing account and the following conditions being met:

(i) either:

the account is in the name of that Primary Creditor and is with the Issuing Bank

(A) for which that cash cover is to be provided and until no amount is or may be outstanding under that Letter of Credit withdrawals from the account may only be made to pay an Issuing Bank amounts due and payable to it under the Credit Facility Documents in respect of that Letter of Credit; or

(B) the account is in the name of the Issuing Bank for which that cash cover is to be provided;

(ii) that Primary Creditor has executed documentation in form and substance satisfactory to the Issuing Bank for which that cash cover is to be provided, creating a first ranking security interest, or other collateral arrangement, in respect of the amount of that cash cover; and

(iii) the relevant cash cover is and remains enforceable on demand by that person and is not subject to any *moratoria* or insolvency enforcement limitation or claw-back risk.

(e) References to a Creditor Representative acting on behalf of the Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Creditors of which it is the Creditor Representative with the consent of the proportion of such Creditors required under and in accordance with the applicable Debt Documents (provided that if the relevant Debt Documents do not specify a voting threshold for a particular matter, the threshold will be a simple majority of the outstanding principal amount (or, in the case of a Facility Agreement, the aggregate Senior Secured Facility Commitments or Super Senior Facility Commitments, as the case may be) under those Debt Documents (excluding any Liabilities owned by a member of the Group)). A Creditor Representative will be entitled to seek instructions from the Creditors of which it is the Credit Representative to the extent required by the applicable Debt Documents, as the case may be, as to any action to be taken by it under this Agreement.

1.4 Any references within the Debt Documents to the Security Agent providing approval or consent or making a request, or to an item or a person being acceptable to, satisfactory to, to the satisfaction of or approved by the Security Agent or requiring certain steps or actions to be taken, or the Security Agent exercising its discretion to permit or waive any action are to be construed (unless otherwise specified in the relevant Debt Document) as references to the Security Agent taking such action or refraining from such action on the instructions of the Instructing Group and any references in the Debt Documents to (i) the Security Agent acting reasonably, (ii) a matter being in the reasonable opinion or determination of the Security Agent, (iii) the Security

Agent's approval or consent not being unreasonably withheld or delayed or (iv) any document, report, confirmation or evidence being required to be reasonably satisfactory to the Security Agent, are to be construed, unless otherwise specified in the Debt Documents, as the Security Agent acting on the instructions of the group of Creditors on whose instructions it is required to act, such Creditors, acting reasonably and (if applicable) not unreasonably withholding or delaying consent, and the Security Agent shall be under no obligation to determine the reasonableness of such instructions from the Instructing Group.

1.5 Third party rights

(a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.

(b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

(c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 20.12 (*Exclusion of liability*) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

(d) The Third Parties Act shall apply to this Agreement in respect of any Senior Secured Noteholder. For the purposes of paragraph (b) above and this paragraph (d), upon any person becoming a Senior Secured Noteholder, such person shall be deemed to be a Party to this Agreement and shall be bound by the provisions of this Agreement and be deemed to receive the benefits of this Agreement, and be subject to the terms and conditions hereof, as if such person were a Party hereto.

1.6 Dutch terms

In this Agreement where it relates to a Dutch person or entity, a reference to:

(a) "**The Netherlands**" means the European part of the Kingdom of the Netherlands and Dutch means in or of The Netherlands;

(b) an "**administrator**" includes a *bewindvoerder* and a *beoogd bewindvoerder*;

(c) a "**receiver**" or an "**administrative receiver**" does not include a *curator* or *bewindvoerder*;

(d) "**gross negligence**" means grove *schuld*;

(e) a "**moratorium**" includes *surseance van betaling*

(f) "**insolvency**" includes a bankruptcy and moratorium;

(g) "**negligence**" means *schuld*;

(h) a "**security interest**" includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), and, in general, any right in rem (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);

(i) any "**procedure**" or "**step**" taken in connection with insolvency proceedings includes a Dutch entity having filed notice under section 36 of the Netherlands Tax Collection Act 1990 (*Invorderingswet 1990*) or section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);

(j) a "**liquidator**" includes a *curator*;

(k) "**wilful misconduct**" means *opzet*;

(l) an "**administration**" or "**dissolution**" (and any of those terms) includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*); and

(m) the currency definition "**euro**" denotes the single currency of the participating Member States.

1.7 French terms

In this Agreement, where it relates to a French entity, a reference to:

(a) an "**inability to pay its debts**" includes that French entity being in a state of *cessation des paiements* as defined in article L. 631-1 of the French commercial code (*Code de commerce*);

(b) a guarantee includes any type of *sûreté personnelle*;

(c) "**corporate reorganisation**" includes any contribution of part of its business in consideration of shares (*apport partiel d'actifs*), any "merger" (*fusions*) or "demerger" (*scission*) implemented in accordance with articles L.236-1 to L.236-24 of the French commercial code (*Code de commerce*);

(d) a "**winding-up**", "**dissolution**" or "**administration**" includes a *redressement judiciaire, cession totale de l'entreprise, a liquidation judiciaire, a sauvegarde* (including a *sauvegarde accélérée* or a *sauvegarde financière accélérée*) under the Livre VI of the French commercial code (*Code de commerce*);

(e) a "**composition**", "**compromise**" or "**assignment**" with any creditor includes a *conciliation* or a *mandat ad hoc* under articles L. 611-3 to L. 611-15 of the French commercial code (*Code de commerce*);

(f) a "**moratorium**" includes a moratorium under a *conciliation* procedure in accordance with articles L. 611-4 to L. 611-15 of the French commercial code (*Code de commerce*);

(g) a "**liquidator**", "**receiver**", "**administrative receiver**", "**administrator**", "**compulsory**" or "**interim manager**" or other similar officer includes an *administrateur judiciaire, mandataire ad hoc, conciliateur, mandataire liquidateur* or any other person appointed as a result of any proceedings described in paragraphs (d), (e) and (f) above;

(h) a "**lease**" includes an *opération de crédit-bail*;

(i) Security includes any type of security (*sûreté réelle*) and assignment or transfer by way of security;

(j) "**wilful misconduct**" means *dol*;

(k) "**gross negligence**" means *faute lourde*; and

(l) "**any analogous procedure or step**" shall include:

(i) any member of the Group applying for *mandat ad hoc* or *conciliation* in accordance with articles L. 611-3 to L. 611-16 of the French *Code de Commerce*; and

(ii) the entry of a judgment opening *sauvegarde, sauvegarde accélérée, sauvegarde financière accélérée, redressement judiciaire* or *liquidation judiciaire* proceedings or ordering a *cession totale ou partielle de l'entreprise* under articles L. 620-1 to L. 670-8 of the French *Code de Commerce*.

1.8 Spanish terms

Where it relates to a Spanish Debtor, or Spanish Security, a reference in this Agreement to:

(a) "**insolvency**" (*concurso*) or "**insolvency proceeding**" (*procedimiento concursal*) and any step or proceeding relating to it has the meaning attributed to them under the Spanish Insolvency Act, including a *declaración de concurso con independencia de su carácter necesario o voluntario*, any notice to a competent court pursuant to articles 583 or 631 of the Spanish Insolvency Act and its *solicitud de inicio de procedimiento de concurso, auto de declaración de concurso,* any judicial or out-of-court composition agreement *(convenio de acreedores or propuesta anticipada de convenio)*, any workout homologation petition (*solicitud de homologación de un acuerdo de refinanciación),* any refinancing agreement *(acuerdo de refinanciación)* or an out-of-court payment agreement *(acuerdo extrajudicial de pagos)*. A person being unable to pay its debts includes that person being in a state of *insolvencia* or in *concurso* according to Spanish Insolvency Act;

(b) "**control**" has the meaning stated under article 42 of the Spanish Commercial Code:

(c) "**winding up**", "**administration**" or "**dissolution**" includes, without limitation, *disolución*, *liquidación* and *procedimiento concursal*;

(d) a "**receiver**", "**administrative receiver**", "**administrator**" or the like includes, without limitation, *administración concursal* or a *liquidador* or any other person performing the same function;

(e) a "**composition**", "**compromise**", "**assignment**" or "**arrangement**" with any creditor includes, without limitation, the execution of a *convenio de acreedores* within the context of a *concurso* or any agreement under Title II or Title III of the Second Book of the Spanish Insolvency Act;

(f) a "**matured obligation**" includes, without limitation, any *importe* or *crédito vencido, líquido y exigible*;

(g) "**trustee**", "fiduciary" and "fiduciary duty" has in each case the meaning given to such term under any applicable law;

(h) "**set-off**" would include to the extent legally possible the rights to compensate under Spanish Royal Decree 5/2005;

(i) a "**security**" includes any mortgage (*hipoteca*), pledge (*prenda*) (with or without transfer of possession), financial collateral agreement (*garantía financiera pignoraticia*) and, in general, any *in rem* security right governed by Spanish law;

(j) a "**guarantee**" includes any accessory personal guarantee (*fianza*), performance bond (*aval*), joint and several guarantee (*garantía solidaria*) and first demand guarantee (*garantía a primer requerimiento*); and

(k) "**wilful misconduct**" means *dolo.*

1.9 Contractual Recognition of Bail-In

Notwithstanding any other term of any Debt Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Debt Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

(a) any Bail-In Action in relation to any such liability, including (without limitation):

(i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;

(ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and

(iii) a cancellation of any such liability; and

(b) a variation of any term of any Debt Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

1.10 ABL Intercreditor Agreement

If there is a conflict between this Agreement and the ABL Intercreditor Agreement then, to the extent permitted by law, the provisions of the ABL Intercreditor Agreement will take priority over the provisions of this Agreement other than: (a) in respect of any matter pertaining solely to the respective rights or obligations of the Senior Secured Creditors (or any of them), on the one hand, and the Super Senior Creditors (or any of them), on the other hand; or (b) to the extent the ABL Intercreditor Agreement expressly provides to the contrary, and in each such case the provisions of this Agreement will, to the extent permitted by law, take priority over the provisions of the ABL Intercreditor Agreement.

2 RANKING AND PRIORITY

2.1 Primary Creditor Liabilities

Each of the Parties agrees that the Liabilities owed by the Debtors to the Primary Creditors shall rank in right and priority of payment *pari passu* and without any preference between them.

2.2 Transaction Security

Each of the Parties agrees that the Transaction Security shall rank and secure the following Senior Secured Liabilities and Super Senior Liabilities (subject to the terms of this Agreement) *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities).

2.3 Subordinated and Intra-Group Liabilities

(a) Each of the Parties agrees that the Subordinated Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Primary Creditors.

(b) This Agreement does not purport to rank any of the Subordinated Liabilities and the Intra-Group Liabilities as between themselves.

2.4 Creditor Representative Amounts

Subject to Clause 17 (*Application of Proceeds*) where applicable, nothing in this Agreement will prevent payment by the Parent or any other Debtor of the Creditor Representative Amounts or the receipt and retention of such Creditor Representative Amounts by the relevant Creditor Representative(s).

2.5 Anti-Layering

(a) Until the Senior Secured Debt Discharge Date, no Debtor shall, without the prior consent of the Majority Senior Secured Creditors, issue or allow to remain outstanding any Liabilities that:

(i) are secured or expressed to be secured by Transaction Security on a basis junior to any of the Super Senior Liabilities but senior to the Senior Secured Debt Liabilities;

(ii) are expressed to rank or rank so that they are subordinated to any of the Super Senior Liabilities but are senior to the Senior Secured Debt Liabilities; or

(iii) are contractually subordinated in right of payment to any of the Super Senior Liabilities and senior in right of payment to the Senior Secured Debt Liabilities.

(b) Paragraph (a) above shall not prevent:

(i) subordination arising by operation of law; or

(ii) a Debtor (or any other member of the Group) from incurring additional Super Senior Liabilities in accordance with the terms of the Super Senior Debt Documents which are expressed to be secured by the Transaction Security and rank on a *pari passu* basis to the other Super Senior Liabilities and are not contractually subordinated in right of payment to any of the Super Senior Liabilities.

2.6 Additional indebtedness

The Creditors acknowledge and agree that the Debtors (or any of them) shall, at any time, be permitted, subject to Clause 2.5 (*Anti-Layering*) and Clause 19 (*New Debt Financings*), to:

(a) incur or have incurred Borrowing Liabilities and/or Guarantee Liabilities in respect of any indebtedness or any facility; and/or

(b) refinance, replace or otherwise restructure (in whole or in part) Borrowing Liabilities and/or Guarantee Liabilities (or any other liabilities and obligations subject to the terms of this Agreement from time to time) with the proceeds of New Debt Financings,

provided in each case that the incurrence of the relevant Borrowing Liabilities and/or Guarantee Liabilities, and the ranking thereof, is not prohibited by the Primary Debt Documents.

3 SUPER SENIOR CREDITORS AND SUPER SENIOR LIABILITIES

3.1 Payment of Super Senior Liabilities

(a) Subject to paragraph (b) below, the Debtors may make Payments of the Super Senior Liabilities at any time in accordance with, and subject to the provisions of, the relevant Super Senior Debt Documents.

(b) Following the occurrence of an Acceleration Event, no member of the Group may make Payments of the Super Senior Liabilities except from Enforcement Proceeds distributed in accordance with Clause 17 (*Application of Proceeds*), provided that:

(i) any Payment prohibited by this paragraph (b) will remain owing by the relevant Debtor;

(ii) any failure to make a Payment as a result of this paragraph (b) shall not prevent the occurrence of a Default or an Event of Default under the relevant Super Senior Debt Document as a consequence of that failure to make a Payment; and

(iii) this paragraph (b) shall not prevent any distribution or dividend out of any Debtor's unsecured assets (*pro rata* to each unsecured creditor's claim) made by a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer appointed in respect of any Debtor or any of its assets.

3.2 Security: Super Senior Creditors

Other than as set out in Clause 3.6 (*Security: Ancillary Lenders and Issuing Banks*), the Super Senior Creditors may take, accept or receive the benefit of:

(a) any Security in respect of the Super Senior Liabilities from any member of the Group in addition to the Common Transaction Security which (except for any Security permitted under Clause 3.6 (*Security: Ancillary Lenders and Issuing Banks*)) to the extent legally possible and subject to any Agreed Security Principles is, at the same time, also offered either:

(i) to the Security Agent as trustee or (where the Security Agent may not hold the relevant Security as trustee under applicable law) as agent for the other Secured Parties in respect of their Liabilities; or

(ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or (where the Security Agent may not hold the relevant Security as trustee under applicable law) as agent for the Secured Parties:

(A) to the other Secured Parties in respect of their Liabilities; or

(B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

and ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and

(b) any guarantee, indemnity or other assurance against loss in respect of the Super Senior Liabilities from any member of the Group in addition to those in:

(i) the original form of any Super Senior Note Indenture or Super Senior Facility Agreement;

(ii) this Agreement; or

(iii) any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.6 (*Security: Ancillary Lenders and Issuing Banks*)) and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

3.3 Restriction on Enforcement: Super Senior Creditors

Subject to Clause 3.4 (*Permitted Enforcement: Super Senior Creditors)* and without prejudice to each Super Senior Creditor's rights under Clauses 13.3 (*Enforcement Instructions*) and Clause 13.4 (*Manner of enforcement*), no Super Senior Creditor shall be entitled to take any Enforcement Action in respect of any of the Super Senior Liabilities prior to the Senior Secured Discharge Date.

3.4 Permitted Enforcement: Super Senior Creditors

(a) Each Super Senior Creditor may take Enforcement Action which would be available to it but for Clause 3.3 (*Restriction on Enforcement: Super Senior Creditors*) in respect of any of the Super Senior Liabilities:

(i) if at the same time as, or prior to, that action:

(A) an Acceleration Event has occurred in respect of the Senior Secured Liabilities in which case each Super Senior Creditor may take the same Enforcement Action (but in respect of the Super Senior Liabilities) as has been taken by the Senior Secured Creditors in respect of that Acceleration Event;

(B) a Super Senior Step-In Event has occurred; or

(C) the Majority Senior Secured Creditors have given their prior consent; or

(ii) to the extent that the Transaction Security Documents require that such Enforcement Action be taken to allow the Security Agent to take any action in accordance with Enforcement Instructions given by the Majority Super Senior Creditors in circumstances where the Security Agent is required to act in accordance with those Enforcement Instructions pursuant to paragraph (c)(ii)(B) of Clause 13.2 (*Instructions to enforce*).

(b) After the occurrence of an Insolvency Event in relation to any member of the Group, each Super Senior Creditor shall be entitled to exercise any right they may otherwise have against that member of the Group to:

(i) accelerate any of that member of the Group's Super Senior Liabilities or declare them prematurely due and payable or payable on demand;

(ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Super Senior Liabilities;

(iii) exercise any right of set-off or take or receive any Payment in respect of any Super Senior Liabilities of that member of the Group; or

(iv) claim and prove in any insolvency process of that member of the Group for the Super Senior Liabilities owing to it.

3.5 Super Senior Step-In Events

(a) Each of the events or circumstances set out in this Clause 3.5 is a Super Senior Step-In Event.

(b) *No Super Senior Cash Discharge*: The Enforcement Realisation Period relating to a Super Senior Event of Default has elapsed and, as at the end of that Enforcement Realisation Period:

(i) that Super Senior Event of Default is continuing;

(ii) no Super Senior Cash Discharge has occurred; and

(iii) no Senior Secured Creditor has entered into a Super Senior Liabilities Transfer.

(c) *Majority Senior Secured Creditors consent*: The Majority Senior Secured Creditors give consent to each Super Senior Creditor taking Enforcement Action and to the Majority Super Senior Creditors constituting the Instructing Group.

3.6 Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior consent of the Instructing Group is obtained, take, accept or receive from any member of the Group the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

(a) the Common Transaction Security;

(b) each guarantee, indemnity or other assurance against loss contained in:

(i) the original form of any Facility Agreement;

(ii) this Agreement; or

(iii) any Common Assurance;

(c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;

(d) any Cash Cover permitted under the Senior Secured Debt Documents and the Super Senior Debt Documents relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank;

(e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); or

(f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

3.7 Restriction on Enforcement: Ancillary Lenders and Issuing Banks

Subject to Clause 3.8 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*), so long as any of the Senior Secured Debt Liabilities or Super Senior Liabilities (other than any Liabilities owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders nor the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

3.8 Permitted Enforcement: Ancillary Lenders and Issuing Banks

(a) Each Ancillary Lender and Issuing Bank may take Enforcement Action which would be available to it but for Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) if:

(i) in the case of such Enforcement Action taken in respect of Senior Secured Debt Liabilities:

(A) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Secured Debt Liabilities (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Liabilities;

(B) that Enforcement Action is taken in respect of Cash Cover which has been provided in accordance with any Facility Agreement;

(C) at the same time as or prior to, that action, the consent of the Required Senior Secured Creditors is obtained; or

(D) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:

(1) accelerate any of that member of the Group's Senior Secured Debt Liabilities or declare them prematurely due and payable on demand;

(2) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Senior Secured Debt Liabilities;

(3) exercise any right of set-off or take or receive any Payment in respect of any Senior Secured Debt Liabilities of that member of the Group; or

(4) claim and prove in any insolvency process of that member of the Group for the Senior Secured Debt Liabilities owing to it; or

(ii) in the case of such Enforcement Action taken in respect of Super Senior Liabilities, the Super Senior:

(A) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Super Senior Liabilities (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Liabilities;

(B) that Enforcement Action is taken in respect of Cash Cover which has been provided in accordance with any Facility Agreement;

(C) at the same time as or prior to, that action, the consent of the Instructing Group is obtained; or

(D) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:

(1) accelerate any of that member of the Group's Super Senior Liabilities or declare them prematurely due and payable on demand;

(2) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Super Senior Liabilities;

(3) exercise any right of set-off or take or receive any Payment in respect of any Super Senior Liabilities of that member of the Group; or

(4) claim and prove in any insolvency process of that member of the Group for the Super Senior Liabilities owing to it.

(b) Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender:

(i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or

(ii) to net or set off in relation to a Multi-account Overdraft,

in accordance with the terms of the relevant Facility Agreement and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from, the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount.

4 SENIOR SECURED DEBT CREDITORS AND SENIOR SECURED DEBT LIABILITIES

4.1 Payment of Senior Secured Debt Liabilities

(a) Subject to paragraph (b) below, and without prejudice to any restrictions contained in the Super Senior Debt Documents, the Debtors may make Payments of the Senior Secured Liabilities at any time in accordance with, and subject to the provisions of, the Senior Secured Debt Documents.

(b) Following the occurrence of an Acceleration Event (until the occurrence of the Super Senior Discharge Date), no member of the Group may make Payments of the Senior Secured Liabilities except from Enforcement Proceeds distributed in accordance with Clause 17 (*Application of Proceeds*), provided that:

(i) any Payment prohibited by this paragraph (b) will remain owing by the relevant Debtor;

(ii) any failure to make a Payment as a result of this paragraph (b) shall not prevent the occurrence of a Default or an Event of Default under the relevant Senior Secured Debt Document as a consequence of that failure to make a Payment; and

(iii) this paragraph (b) shall not prevent any distribution or dividend out of any Debtor's unsecured assets (*pro rata* to each unsecured creditor's claim) made by a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer appointed in respect of any Debtor or any of its assets.

4.2 Security: Senior Secured Creditors

The Senior Secured Creditors may take, accept or receive the benefit of:

(a) any Security in respect of the Senior Secured Debt Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible is, at the same time, also offered either:

(i) to the Security Agent as trustee or (where the Security Agent may not hold the relevant Security as trustee under applicable law) as agent for the other Secured Parties in respect of their Liabilities; or

(ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or (where the Security Agent may not hold the relevant Security as trustee under applicable law) as agent for the Secured Parties:

(A) to the other Secured Parties in respect of their Liabilities; or

(B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and

(b) any guarantee, indemnity or other assurance against loss in respect of the Senior Secured Liabilities from any member of the Group in addition to those in:

(i) the original form of any Senior Secured Note Indenture or Senior Secured Facility Agreement; or

(ii) this Agreement; or

(iii) any Common Assurance,

if and to the extent legally possible at the same time it also offered to the other Secured Parties in respect of their respective Liabilities and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

5 HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

5.1 Identity of Hedge Counterparties

(a) Subject to paragraph (b) below, no entity providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities and obligations arising in relation to those hedging arrangements nor shall those liabilities and obligations be treated as Hedging Liabilities unless that entity is or becomes a Party as a Hedge Counterparty.

(b) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

5.2 Restriction on Payments: Hedging Liabilities

The Debtors shall not, and shall procure that no other member of the Group will, make any Payment of the Hedging Liabilities at any time unless:

(a) that Payment is permitted under Clause 5.3 (*Permitted Payments: Hedging Liabilities*); or

(b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*),

provided that, following the occurrence of an Acceleration Event, no member of the Group may make Payments of the Hedging Liabilities except from Recoveries distributed in accordance with Clause 17 (*Application of Proceeds*), other than any distribution or dividend out of any Debtor's unsecured assets (*pro rata* to each unsecured creditor's claim) made by a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer appointed in respect of any Debtor or any of its assets.

5.3 Permitted Payments: Hedging Liabilities

(a) Subject to paragraph (b) below, the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:

(i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;

(ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:

(A) any of sections 2(d) (Deduction or Withholding for Tax), 2(e) (Default Interest; Other Amounts), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments) and 11 (Expenses) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);

(B) any of sections 2(d) (Deduction or Withholding for Tax), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments), 9(h)(i) (Prior to Early Termination) and 11 (Expenses) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or

(C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);

(iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;

(iv) to the extent that:

(A) the relevant Debtor's obligation to make the Payment arises from:

(1) a Credit Related Close-Out in relation to that Hedging Agreement; or

(2) a Permitted Automatic Early Termination under that Hedging Agreement which arises as a result of an event relating to a Debtor; and

(B) no Default is continuing at the time of that Payment or would result from that Payment;

(v) to the extent that no Default is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:

(A) section 5(a)(vii) (Bankruptcy) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;

(B) section 5(a)(vii) (Bankruptcy) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;

(C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or

(D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty; or

(vi) if the Required Super Senior Creditors and the Required Senior Secured Creditors give prior consent to the Payment being made.

(b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Required Super Senior Creditors and the Required Senior Secured Creditors is obtained.

(c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 5.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

5.4 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.2 (*Restriction on Payments: Hedging Liabilities*) and 5.3 (*Permitted Payments: Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

5.5 No acquisition of Hedging Liabilities

The Debtors shall not, and shall procure that no other member of the Group will:

(a) enter into any Liabilities Acquisition; or

(b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Hedging Liabilities, unless the prior consent of the Required Super Senior Creditors and the Required Senior Secured Creditors is obtained.

5.6 Amendments and Waivers: Hedging Agreements

(a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.

(b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if the amendment or waiver does not breach another term of this Agreement.

5.7 Security: Hedge Counterparties

The Hedge Counterparties may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Hedging Liabilities other than:

(a) the Common Transaction Security;

(b) any guarantee, indemnity or other assurance against loss contained in:

(i) the original form of Schedule 4 (*Hedge Counterparties' Guarantee and Indemnity*);

(ii) this Agreement (other than Schedule 4 (*Hedge Counterparties' Guarantee and Indemnity*));

(iii) any Common Assurance; or

(iv) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iii) above;

(c) as otherwise contemplated by Clauses 3.2 (*Security: Super Senior Creditors*) and 4.2 (*Security: Senior Secured Creditors*); and

(d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

5.8 Restriction on Enforcement: Hedge Counterparties

Subject to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 5.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 13.3 (*Enforcement Instructions*) and 13.4 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

5.9 Permitted Enforcement: Hedge Counterparties

(a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

Non-Credit Related Close-Outs

(i) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of any term of a Primary Financing Document; or

(ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;

Credit Related Close-Outs

(iii) if a Distress Event has occurred;

(iv) an Insolvency Event has occurred in relation to a Debtor which is party to that Hedging Agreement; or

(v) if the Instructing Group give prior consent to that termination or close-out being made.

(b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than ten (10) days after notice of that default has been given to the Security Agent pursuant to paragraph (f) of Clause 25.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:

(i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and

(ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.

(c) After the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that member of the Group to:

(i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group;

(ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;

(iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or

(iv) claim and prove in any insolvency process of that member of the Group for the Hedging Liabilities owing to it.

5.10 Required Enforcement: Hedge Counterparties

(a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:

(i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that that Acceleration Event has occurred; and

(ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.

(b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Acceleration Event.

(c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Instructing Group).

5.11 Treatment of Payments due to Debtors on termination of hedging transactions

(a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.

(b) The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with paragraph (a) above shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

5.12 Terms of Hedging Agreements

The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and the Debtors party to the Hedging Agreements shall ensure that, at all times:

(a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "**Hedging Agreement**" and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;

(b) each Hedging Agreement is based either:

(i) on an ISDA Master Agreement; or

(ii) on another framework agreement which is similar in effect to an ISDA Master Agreement;

(c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:

(i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or

(ii) an event similar in meaning and effect to either of those described in paragraph (i) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

(A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement;

(B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement; or

(C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;

(d) each Hedging Agreement will not provide for Automatic Early Termination other than to the extent that:

(i) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement; and

(ii) that Automatic Early Termination is:

(A) as provided for in section 6(a) (Right to Terminate following Event of Default) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);

(B) as provided for in section 6(a) (Right to Terminate Following Event of Default) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or

(C) similar in effect to that described in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement); and

(e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 5.10 (*Required Enforcement: Hedge Counterparties*).

5.13 Hedge Counterparties' Guarantee and Indemnity

Each Debtor agrees that it will be bound by the obligations set out in Schedule 4 (*Hedge Counterparties' Guarantee and Indemnity*).

6 OPTION TO PURCHASE

6.1 Option to purchase: Senior Secured Creditors

(a) Some or all of the Senior Secured Noteholders and Senior Secured Lenders (the "**Purchasing Secured Creditors**") may after a Distress Event, after having given all Senior Secured Noteholders and Senior Secured Lenders the opportunity to participate in such purchase, by giving not less than ten days' notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 22.4 (*Change of Lender*), of all, but not part, of the rights, benefits and obligations in respect of the Super Senior Liabilities if:

(i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the relevant Super Senior Debt Document;

(ii) any conditions relating to such a transfer contained in the relevant Super Senior Debt Document are complied with, other than:

(A) any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and

(B) to the extent to which the Purchasing Secured Creditors provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer;

(iii) the relevant Creditor Representative, on behalf of the Super Senior Creditors, is paid an amount by the Purchasing Secured Creditors equal to the aggregate of:

(A) any amounts provided as cash cover by the Purchasing Secured Creditors for any Letter of Credit (as envisaged in paragraph (ii)(B) above);

(B) all of the Super Senior Liabilities at that time (whether or not due), including all amounts that would have been payable under the Super Senior Debt Documents if the Super Senior Liabilities were being prepaid by the relevant Debtors on the date of that payment; and

(C) all costs and expenses (including legal fees) incurred by the relevant Creditor Representative and/or the Super Senior Creditors as a consequence of giving effect to that transfer;

(iv) as a result of that transfer the Super Senior Creditors have no further actual or contingent liability to any Debtor under the relevant Debt Documents;

(v) an indemnity is provided from the Purchasing Secured Creditors (or from another third party acceptable to all the Super Senior Creditors) in a form satisfactory to each Super Senior Creditor in respect of all losses which may be sustained or incurred by any Super Senior Creditor in consequence of any sum received or recovered by any Super Senior Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Super Senior Creditor for any reason; and

(vi) the transfer is made without recourse to, or representation or warranty from, the Super Senior Creditors, except that each Super Senior Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

(b) The Creditor Representatives in respect of the Super Senior Creditors shall, at the request of the Purchasing Secured Creditors notify the Senior Secured Noteholders and Senior Secured Lenders of:

(i) the sum of the amounts described in paragraphs (a)(iii)(B) and (C) above; and

(ii) the amount of each Letter of Credit for which cash cover is to be provided by all the Purchasing Secured Creditors.

(c) If more than one Purchasing Secured Creditor wishes to exercise the option to purchase the Super Senior Liabilities in accordance with paragraph (a) above, each such Purchasing Secured Creditor shall:

(i) acquire the Super Senior Liabilities *pro rata*, in the proportion that its Senior Secured Credit Participation bears to the aggregate Senior Secured Credit Participations of all the Purchasing Secured Creditors; and

(ii) inform the Senior Secured Note Trustee in accordance with the terms of the Senior Secured Note Indenture or the relevant Creditor Representative(s) in accordance with the terms of the relevant Senior Secured Debt Documents, who will determine (consulting with each other as required) the appropriate share of the Super Senior Liabilities to be acquired by each such Purchasing Secured Creditor and who shall inform each such Purchasing Secured Creditor accordingly,

and the Senior Secured Note Trustee or the relevant Creditor Representative(s) (as applicable) shall promptly inform the Creditor Representatives of the Super Senior Creditors of the Purchasing Secured Creditors intention to exercise the option to purchase the Super Senior Liabilities.

7 INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

7.1 Restriction on Payment: Intra-Group Liabilities

Prior to the Final Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will, make any Payments of the Intra-Group Liabilities at any time unless:

(a) that Payment is permitted under Clause 7.2 (*Permitted Payments: Intra-Group Liabilities*); or

(b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 7.8 (*Permitted Enforcement: Intra-Group Lenders*).

7.2 Permitted Payments: Intra-Group Liabilities

(a) Subject to paragraphs (b) and (c) below, the Debtors may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due.

(b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred unless:

(i) the Instructing Group consents to that Payment being made; or

(ii) that Payment is made to facilitate the making of a Permitted Super Senior Debt Payment, a Permitted Hedge Payment or a Permitted Senior Secured Debt Payment.

(c) No payment of principal may be made in respect of the Structural Intra-Group Liabilities by a French Debtor thereunder pursuant to paragraph (a) above unless such payment is made to facilitate the making of a payment under any Primary Debt Document, where the proceeds of the relevant financing documented thereunder were on-lent, directly or indirectly, to such French Debtor under such Structural Intra-Group Liabilities.

(d) Notwithstanding any other provision of this Agreement, Structural Intra-Group Liabilities may be cancelled, forgiven or otherwise repaid, released or discharged upon:

(i) a sale or other disposition (including by way of consolidation or merger) of the relevant debtor in respect of such Structural Intra-Group Liabilities (whether by direct sale or sale of a holding company), if the sale or other disposition does not violate the Primary Debt Documents and the relevant debtor ceases to be a Restricted Subsidiary as a result of the sale or other disposition;

(ii) the sale or disposition of all or substantially all the assets of the relevant debtor in respect of such Structural Intra-Group Liabilities (other than to the Parent or any of its Subsidiaries), if the sale or other disposition does not violate the Primary Debt Documents;

(iii) as a result of any merger or consolidation transaction if the merger or consolidation does not violate the Primary Debt Documents; and

(iv) to the extent such cancellation, forgiveness, repayment, release or discharge, whether by capitalization or otherwise, is necessary to comply with applicable tax regulations regarding the deductibility of interest expense (as determined in good faith by senior management of the Parent).

7.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 7.1 (*Restriction on Payment: Intra-Group Liabilities*) and 7.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

7.4 Acquisition of Intra-Group Liabilities

(a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:

(i) enter into any Liabilities Acquisition; or

(ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any Intra-Group Liabilities at any time.

(b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:

(i) that action would result in a breach of a Primary Financing Document; or

(ii) at the time of that action, an Acceleration Event has occurred.

(c) The restrictions in paragraph (b) above shall not apply if:

(i) the Instructing Group consents to that action; or

(ii) that action is taken to facilitate the making of a Permitted Super Senior Debt Payment, a Permitted Hedge Payment or a Permitted Senior Secured Debt Payment.

7.5 Security: Intra-Group Lenders

Prior to the Final Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless:

(a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Primary Financing Documents; or

(b) the prior consent of the Required Super Senior Creditors and the Required Senior Secured Creditors is obtained.

7.6 Amendments and Waivers: Structural Intra-Group Liabilities

(a) The Structural Intra-Group Liabilities Lenders shall not sell, factor, discount, transfer, assign or otherwise dispose of any of its right, title or interest in or to the Structural Intra-Group Liabilities.

(b) In addition, the Structural Intra-Group Liabilities Lenders shall not amend or modify the acceleration rights they have in connection with the Structural Intra-Group Liabilities, amend the Structural Intra-Group Liabilities in a manner which would reduce the principal amount thereof (unless such reduction would constitute a payment permitted under Clause 7.2 (*Permitted Payments: Intra-Group Liabilities*)), amend the maturity date of the Structural Intra-Group Liabilities, add any scheduled repayment obligations or make any such modifications to the Structural Intra-Group Liabilities which will be prejudicial to the Primary Creditors.

7.7 Restriction on enforcement: Intra-Group Lenders

Subject to Clause 7.8 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

7.8 Permitted Enforcement: Intra-Group Lenders

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 9.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

(a) accelerate any of that member of the Group's Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;

(b) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Intra-Group Liabilities;

(c) exercise any right of set-off or take or receive any Payment in respect of any Intra-Group Liabilities of that member of the Group; or

(d) claim and prove in any insolvency process of that member of the Group for the Intra-Group Liabilities owing to it.

7.9 Representations: Intra-Group Lenders

Each Intra-Group Lender which is not a Debtor represents and warrants to the Primary Creditors and the Security Agent that:

(a) it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;

(b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and

(c) the entry into and performance by it of this Agreement does not and will not:

(i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or

(ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

8 SUBORDINATED LIABILITIES

8.1 Restriction on Payment: Subordinated Liabilities

Prior to the Final Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities at any time unless:

(a) that Payment is permitted under Clause 8.2 (*Permitted Payments:*); or

(b) the taking or receipt of that Payment is permitted under Clause 8.8 (*Permitted Enforcement:*).

8.2 Permitted Payments: Subordinated Liabilities

The Parent or any other member of the Group may make Payments in respect of the Subordinated Liabilities then due if:

(a) the Payment is expressly permitted by the Primary Financing Documents; or

(b) the Required Super Senior Creditors and the Required Senior Secured Creditors each consent to that Payment being made.

8.3 Payment obligations continue

Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 8.1 (*Restriction on Payment:*) and 8.2 (*Permitted Payments:*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

8.4 No acquisition of Subordinated Liabilities

Prior to the Final Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will:

(a) enter into any Liabilities Acquisition; or

(b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Subordinated Liabilities, unless the prior consent of the Required Super Senior Creditors and the Required Senior Secured Creditors is obtained.

8.5 Amendments and Waivers: Subordinated Liabilities

Prior to the Final Discharge Date, the Subordinated Creditors may not amend or waive the terms of any agreement evidencing the terms of the Subordinated Liabilities unless:

(a) the amendment or waiver is of a minor and administrative nature and is not prejudicial to the Primary Creditors; or

(b) the prior consent of the Required Super Senior Creditors and the Required Senior Secured Creditors is obtained.

8.6 Security: Subordinated Liabilities

Prior to the Final Discharge Date, the Subordinated Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Subordinated Liabilities other than as expressly permitted by the Primary Financing Documents.

8.7 Restriction on Enforcement: Subordinated Creditors

Subject to Clause 8.8 (*Permitted Enforcement:*) the Subordinated Creditors shall not be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date.

8.8 Permitted Enforcement: Subordinated Creditors

After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the relevant Subordinated Creditor in accordance with Clause 9.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

(a) accelerate any of that member of the Group's Subordinated Liabilities or declare them prematurely due and payable or payable on demand;

(b) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Subordinated Liabilities;

(c) exercise any right of set-off or take or receive any Payment in respect of any Subordinated Liabilities of that member of the Group; or

(d) claim and prove in any insolvency process of that member of the Group for the Subordinated Liabilities owing to it.

8.9 Representations: Subordinated Creditors

Each Subordinated Creditor represents and warrants to the Primary Creditors and the Security Agent that:

(a) it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;

(b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and

(c) the entry into and performance by it of this Agreement does not and will not:

(i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or

(ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

9 EFFECT OF INSOLVENCY EVENT

9.1 Cash Cover

This Clause 9 is subject to Clause 17.3 (*Treatment of Cash Cover, Lender Cash Collateral*) and Clause 21.5 (*Turnover obligations*).

9.2 Distributions

(a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group (in the case of a Primary Creditor, only to the extent that such amount constitutes Enforcement Proceeds) in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.

(b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 17 (*Application of Proceeds*).

9.3 Set-Off

(a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall (in the case of a Primary Creditor, only to the extent that such amount

constitutes Enforcement Proceeds) pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 17 (*Application of Proceeds*).

(b) Paragraph (a) above shall not apply to:

(i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Permitted Gross Outstandings of a Multi-account Overdraft to or towards its Designated Net Amount;

(ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

(iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

(iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and

(v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

9.4 Non-cash distributions

If the Security Agent or any other Secured Party receives a distribution in a form other than cash in respect of any of the Liabilities, the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

9.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that the netting or set-off represents a reduction of the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount, after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent, on its behalf, to:

(a) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;

(b) demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;

(c) collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and

(d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's Liabilities.

9.6 Further assurance – Insolvency Event

Each Creditor will:

(a) do all things that the Security Agent requests in order to give effect to this Clause 9; and

(b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 9 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

9.7 Security Agent instructions

For the purposes of Clause 9.2 (*Distributions*), Clause 9.5 (*Filing of claims*) and Clause 9.6 (*Further assurance – Insolvency Event*) the Security Agent shall act:

(a) on the instructions of the Instructing Group; or

(b) in the absence of any such instructions, as the Security Agent sees fit.

9.8 Payment of the *Soulte*

(a) If, following any Relevant Security Enforcement, a *Soulte* is owed by the Secured Parties to any Debtor, that Debtor agrees that such *Soulte* shall only become due and payable by the relevant Secured Parties on the Business Day following the Final Discharge Date.

(b) For the avoidance of doubt, the obligations of each Secured Party to pay its proportionate share of any *Soulte* are several (*conjointes et non solidaires*).

10 CHAPTER 11 PROVISIONS

10.1 Definitions

In this Clause 10:

"**Pay-Over Amount**" has the meaning given in paragraph (c) of Clause 10.4 (*Adequate protection*).

"**Post-Petition Interest**" means interest, fees, expenses and other charges that, pursuant to the Primary Financing Documents accrue upon the commencement of or continue to accrue after the commencement of any US Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under US Bankruptcy Laws or in any such US Insolvency or Liquidation Proceeding.

"**UCC"** means the Uniform Commercial Code as from time to time in effect in the State of New York.

"**United States**" means the United States of America.

"**US Bankruptcy Code**" means Title 11 of the United States Code, as amended.

"**US Bankruptcy Laws**" means the US Bankruptcy Code and any other laws of the United States or any State (within the meaning of Section 9-102(a)(76) of the UCC) relating to the liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, administration, rearrangement, judicial management, receivership, insolvency, reorganisation, or similar of any person.

"**US DIP Financing**" has the meaning given in Clause 10.3 (*Financing and sale issues*).

"**US Insolvency or Liquidation Proceeding**" means:

(a) any case or proceeding commenced by or against any Debtor under the US Bankruptcy Laws or any similar case or proceeding relative to any Debtor in the United States;

(b) any liquidation, dissolution, judicial management, marshalling of assets or liabilities or other winding up of or relating to any Debtor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(c) any other proceeding in the United States of any type or nature in which substantially all claims of creditors of any Debtor are determined and any payment or distribution is or may be made on account of such claims.

10.2 Separate classification of debt

Each Primary Creditor acknowledges and agrees that the Senior Secured Liabilities are fundamentally different from the Super Senior Liabilities and must be separately classified from each other in any plan of reorganisation, plan of liquidation, agreement for composition, or other type of plan of arrangement proposed, confirmed, or adopted in a US Insolvency or Liquidation Proceeding. Neither Creditor Class will seek in a US Insolvency or Liquidation Proceeding to be treated as part of the same class of creditors as the other Creditor Class and will not object to, oppose or contest (or support directly or indirectly any other person objecting to, opposing or contesting) any pleading filed by a person seeking separate classification of claims as between each Creditor Class or any chapter 11 plan, agreement for composition or other type of plan of arrangement proposed, confirmed or adopted.

To further effectuate the intent of the parties as provided in the immediately preceding paragraph, if it is held or determined by a Court of competent jurisdiction that the claims of the Senior Secured Creditors and the Super Senior Creditors should be treated or classified together in the same class, then each of the parties hereto hereby acknowledges and agrees that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Debtors in respect of the collateral (with the effect being that, to the extent that in the aggregate, the Super Senior Creditors shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or that would be owing if there were such separate classes of senior and junior secured claims) in respect of Post-Petition Interest, including any additional interest payable pursuant to the Super Senior Note Documents, arising from or related to a default, whether or not any claim therefor is allowed or allowable as a claim in any US Insolvency or Liquidation Proceeding) before any distribution is made in respect of the claims held by the Senior Secured Creditors, hereby acknowledging and agreeing to turn over to the Super Senior Creditors, the collateral or proceeds thereof otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Senior Secured Creditors.

10.3 Financing and sale issues

If any Debtor is subject to any US Insolvency or Liquidation Proceeding and any Senior Secured Creditor shall desire to consent (or not object) to the sale, use or lease of cash or other collateral or to consent (or not object) to any Debtor obtaining financing under Section 363 or Section 364 of the US Bankruptcy Code (a "**US DIP Financing**")), then each other Primary Creditor agrees that it:

(a) will not raise any objection to, will not support directly or indirectly any objection to or otherwise contest, and will be deemed to have consented to, such sale, use or lease of such cash or other collateral or such US DIP Financing and will not request adequate protection or any other relief in connection therewith, except to the extent permitted by Clause 10.4 (*Adequate protection*);

(b) to the extent the Security securing any Senior Secured Liabilities are subordinated to or have the same priority as any Security securing a US DIP Financing, will subordinate (and will be deemed to have subordinated) its Security securing the Primary Liabilities owed to it and any other security or collateral securing the Primary Liabilities owed to it to such US DIP Financing (and all obligations relating thereto) in the manner set out in Clause 2 (*Ranking and Priority*) and the order of application in Clause 17.1 (*Order of application*) to any adequate protection granted to the Senior Secured Creditors; and

(c) shall not provide or offer to provide any US DIP Financing that is or will be secured by a Security senior or *pari passu* with the Security securing any Senior Secured Liabilities without the prior written consent of the Required Senior Secured Creditors.

10.4 Adequate protection

(a) Each Primary Creditor agrees not to object to, contest or support directly or indirectly any other person objecting to or contesting, and will be deemed to have consented to:

(i) any request by any Senior Secured Creditor for adequate protection under any US Bankruptcy Law, including adequate protection with respect to the Senior Secured Creditors' rights in the form of periodic cash payments or the proceeds of a US DIP Financing; or

(ii) any objection by any Senior Secured Creditor to any motion, relief, action or proceeding based on any Senior Secured Creditor claiming a lack of adequate protection,

in the event of any US Insolvency or Liquidation Proceeding.

(b) Notwithstanding paragraph (a) above, if, in any US Insolvency or Liquidation Proceeding:

(i) the Senior Secured Creditors are granted adequate protection in the form of additional Security on additional or replacement assets and super-priority claims in connection with any US DIP Financing or use of cash collateral under Section 363 or 364 of the US Bankruptcy Code, then each other Primary Creditor, solely to the extent it is a Secured Party, may seek or request adequate protection in the form of additional Security on such additional or replacement assets or a super-priority claim (as applicable); or

(ii) any Primary Creditor (other than a Senior Secured Creditor) seeks or requests adequate protection and such adequate protection is granted in the form of additional Security on additional or replacement assets or a super-priority claim, then such Primary Creditor agrees that each Senior Secured Creditor shall also be granted additional Security on such additional or replacement assets as security and adequate protection for the Senior Secured Liabilities and any such US DIP Financing and a super-priority claim (as applicable),

provided that any Security or super-priority claim granted to a Primary Creditor (other than a Super Senior Creditor) in accordance with this paragraph (b), including any claim arising under Section 507(b) of the US Bankruptcy Code, is subordinated to the Security securing, and claims with respect to, the Super Senior Liabilities, any such US DIP Financing and any other Security or claims granted to the Super Senior Creditors as adequate protection in the manner set out in Clause 2 (*Ranking and Priority*) and the order of application in Clause 17.1 (*Order of application*).

Except as otherwise expressly provided herein, no Primary Creditor may seek any adequate protection without the consent of the Required Senior Secured Creditors.

10.5 Post-Petition Interest

None of the Primary Creditors shall oppose or seek to challenge (or support directly or indirectly any person in opposing or seeking to challenge) any claim by any Senior Secured Agent or Senior Secured Creditor for allowance in any US Insolvency or Liquidation Proceeding of Senior Secured Liabilities of Post-Petition Interest under Section 506(b) of the US Bankruptcy Code or otherwise.

10.6 Additional US Bankruptcy Provisions.

(a) **Credit Bidding**. Any Primary Creditor may bid for assets secured in favor of such Primary Creditor at any public or private sale thereof; provided, that: (i) no Super Senior Creditor may make a credit bid for such assets and offset Super Senior Liabilities against the purchase price therefor unless the aggregate value of the assets of the Debtors is less than the outstanding amount of Super Senior Liabilities and (ii) no Senior Secured Creditor may make a credit bid for such assets and offset Senior Secured Liabilities against the purchase price therefor unless the net cash proceeds of such bid are otherwise sufficient to cause the Super Senior Discharge Date to occur upon the consummation of such sale.

(b) **Relief from the Automatic Stay**. Until the Senior Secured Debt Discharge Date, each Super Senior Creditor agrees that (i) none of them shall seek relief from the automatic stay or any other stay in any US Insolvency or Liquidation Proceeding in respect of the Senior Secured Liabilities, (A) without the prior written consent of the Senior Secured Creditors or (B) unless and to the extent the Senior Secured Creditors have obtained relief from such stay in respect of the Senior Secured Liabilities and (ii) none of them shall oppose any relief from the automatic stay or other stay in

any US Insolvency or Liquidation Proceeding sought by the Senior Secured Creditors in respect of the Senior Secured Liabilities.

(c) **Waiver**. Each Super Senior Creditor agrees that it shall consent to, and shall not object to, oppose, support any objection, or take any other action to impede, the right of any Senior Secured Creditor to make an election under Section 1111(b)(2) of the US Bankruptcy Code (or similar bankruptcy law). Each Super Senior Creditor waives any claim it may hereafter have against any Senior Secured Creditor arising out of the election of any Senior Secured Creditor of the application of Section 1111(b)(2) of the US Bankruptcy Code (or similar bankruptcy law). Nothing in this Agreement shall restrict the holder of any US DIP Financing from having, or seeking to have, such US DIP Financing repaid, in whole or in part, from the proceeds of the assertion of any claim under Section 506(c) of the US Bankruptcy Code (or any similar provision of any other bankruptcy law).

(d) **No Waiver**. Except as otherwise expressly provided in this Agreement, nothing contained herein shall prohibit or in any way limit any Senior Secured Creditor from objecting in any US Insolvency or Liquidation Proceeding to any action taken by any Super Senior Creditor.

(e) **Asset Dispositions**. Until the Senior Secured Debt Discharge Date, each Super Senior Creditor agrees that, in the event of any US Insolvency or Liquidation Proceeding, the Super Senior Creditors will not directly or indirectly object or oppose, or support any Person in objecting or opposing, on any basis available to a secured creditor (but not unsecured creditors generally) any motion for the disposition of any assets secured in favor of the Senior Secured Creditors free and clear of the Liens of the Super Senior Creditors or other claims under Sections 363, 365 or 1129 of the US Bankruptcy Code, or any comparable provision of any bankruptcy law (and including any motion for bid procedures or other procedures related to the disposition that is the subject of such motion), and shall be deemed to have consented (subject to its right to object to such disposition to the extent expressly set forth above) to any such disposition of any assets secured in favor of the Senior Secured Creditors under Section 363(f) of the US Bankruptcy Code, or any comparable provision of any bankruptcy law, that has been consented to by the Senior Secured Creditors (to the extent consent of the holder of a Lien is required); provided, that, the proceeds of such disposition of any such assets to be applied to the Senior Secured Liabilities or the Super Senior Liabilities will be applied in accordance with Clause 17.1 (*Order of application*).

(f) **Subordination Agreement**. The provisions of this Clause 10 are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the US Bankruptcy Code (or similar bankruptcy law).

11 TURNOVER OF RECEIPTS

11.1 Cash Cover

This Clause 11 is subject to Clause 17.3 (*Treatment of Cash Cover, Lender Cash Collateral and ABL Collateral*) and Clause 21.5 (*Turnover obligations*).

11.2 Turnover by the Primary Creditors

Subject to Clause 11.3 (*Exclusions*) and to Clause 11.5 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Primary Creditor receives or recovers any Enforcement Proceeds except in accordance with Clause 17 (*Application of Proceeds*), that Primary Creditor will:

(a) in relation to receipts and recoveries not received or recovered by way of set-off:

(i) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and

(ii) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and

(b) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

11.3 Turnover by the other Creditors

Subject to Clause 11.3 (*Exclusions*) and to Clause 11.5 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor other than a Primary Creditor receives or recovers:

(a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:

(i) a Permitted Payment; nor

(ii) made in accordance with Clause 17 (*Application of Proceeds*);

(b) other than where paragraph (a) of Clause 9.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;

(c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 9.3 (*Set-Off*) applies, any amount:

(i) on account of, or in relation to, any of the Liabilities:

(A) after the occurrence of a Distress Event; or

(B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or

(ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with Clause 17 (*Application of Proceeds*);

(d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 17 (*Application of Proceeds*); or

(e) other than where paragraph (a) of Clause 9.3 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 17 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

(i) in relation to receipts and recoveries not received or recovered by way of set-off:

(A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and

(B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and

(ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

11.4 Exclusions

Clause 11.2 (*Turnover by the Primary Creditors*) and Clause 11.3 (*Turnover by the other Creditors*) shall not apply to any receipt or recovery:

(a) by way of:

(i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

(ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

(iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or

(iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender;

(b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount; or

(c) made in accordance with Clause 18 (*Equalisation*); or

(d) that has been distributed by a Note Trustee in accordance with the applicable Note Indenture unless that Note Trustee had received at least two (2) Business Days' prior notice that an Enforcement Date, an Acceleration Event or an Insolvency Event in relation to a Debtor has occurred or that the receipt or recovery falls within Clause 11.2 (*Turnover by the Primary Creditors*) in each case prior to distribution of the relevant amount.

11.5 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Primary Creditor or Subordinated Creditor to:

(a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or

(b) make any assignment or transfer permitted by Clause 22 (*Changes to the Parties*),

which:

(i) is not prohibited by:

(A) the Super Senior Facility Agreement(s) and the Super Senior Note Indenture(s); and

(B) the Senior Secured Facility Agreement(s) and the Senior Secured Note Indenture(s); and

(ii) is not in breach of:

(A) Clause 5.5 (*No acquisition of Hedging Liabilities*); or

(B) Clause 8.4 (*No acquisition of Subordinated Liabilities*),

and that Primary Creditor or Subordinated Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

11.6 Amounts received by Debtors

If any of the Debtors receives or recovers any amount which, under the terms of any of the Debt Documents, should have been paid to the Security Agent, that Debtor will:

(a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and

(b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

11.7 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 11 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

12 REDISTRIBUTION

12.1 Recovering Creditor's rights

(a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 9 (*Effect of Insolvency Event*) or Clause 11 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 17 (*Application of Proceeds*).

(b) On an application by the Security Agent pursuant to Clause 17 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

12.2 Reversal of redistribution

(a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:

(i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 12.1 (*Recovering Creditor's rights*) (a "**Sharing Party**") shall (subject to Clause 21 (*Note Trustee Protections*)), upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and

(ii) as between the relevant Debtor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.

(b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

12.3 Deferral of subrogation

No Creditor or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor which ranks ahead of it in accordance with the priorities set out in 2 (*Ranking and Priority*) or the order of application in Clause 17 (*Application of Proceeds*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor) have been irrevocably discharged in full.

13 ENFORCEMENT OF TRANSACTION SECURITY

13.1 Credit Facility Cash Cover

This Clause 13 is subject to Clause 17.3 (*Treatment of Cash Cover, Lender Cash Collateral*).

13.2 Instructions to enforce

(a) If either the Majority Super Senior Creditors or the Majority Senior Secured Creditors wish to issue Enforcement Instructions, the Creditor Representatives (and, if applicable, Hedge Counterparties) representing the Primary Creditors comprising the Majority Super Senior Creditors or Majority Senior Secured Creditors (as the case may be) shall deliver a copy of those proposed Enforcement Instructions (an "**Initial Enforcement Notice**") to the Security Agent and the Security Agent shall promptly forward such Initial Enforcement Notice to each Creditor Representative and each Hedge Counterparty which did not deliver such Initial Enforcement Notice.

(b) Subject to paragraph (c) below, the Security Agent will act in accordance with Enforcement Instructions received from the Majority Senior Secured Creditors.

(c) If:

(i) in relation to Enforcement of ABL Priority Collateral at such time as the ABL Intercreditor Agreement is in force and restrictions thereunder on the Secured Parties (or any of them) carrying out Enforcement of the ABL Priority Collateral are in effect:

(A) the Super Senior Discharge Date has not occurred by the date falling 180 days after the date on which the Initial Enforcement Notice delivered to the Security Agent by the Creditor Representative representing the Majority Super Senior Creditors (and, if applicable, Super Senior Hedging Counterparties) becomes effective in accordance with Clause 26.4 (*Delivery*) (a "**Super Senior Step-In Event**"); and

(B)

(1) 15 or more days have elapsed from the earliest date on which any Secured Party is entitled to carry out Enforcement of ABL Priority Collateral under and in accordance with the ABL Intercreditor Agreement, and the Majority Senior Secured Creditors (or their Creditor Representative(s) on their behalf):

(a) have not: (x) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or (y) appointed a Financial Adviser to assist them in making such a determination; or

(b) have instructed the Security Agent not to enforce or to cease enforcing the ABL Priority Collateral; or

(2) the Super Senior Discharge Date has not occurred by the date falling 105 days after the earliest date on which any Secured Party is entitled to carry out Enforcement of ABL Priority Collateral under and in accordance with the ABL Intercreditor Agreement;

(ii) in relation to Enforcement of ABL Note Priority Collateral at such time as the ABL Intercreditor Agreement is in force:

(A) a Super Senior Step-In Event has occurred; or

(B) 135 days have elapsed from the date on which the Initial Enforcement Notice delivered to the Security Agent by the Creditor Representative representing the Majority Super Senior Creditors (and, if applicable, Super Senior Hedging Counterparties) becomes effective in accordance with Clause 26.4 (*Delivery*), and the Majority Senior Secured Creditors (or their Creditor Representative(s) on their behalf):

(1) have not: (x) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or (y) appointed a Financial Adviser to assist them in making such a determination; or

(2) have instructed the Security Agent not to enforce or to cease enforcing the ABL Note Priority Collateral;

(iii) in relation to Enforcement of Transaction Security to which neither paragraph (i) nor (ii) above applies, a Super Senior Step-In Event has occurred; or

(iv) the Senior Secured Discharge Date has occurred,

then the Security Agent will act in accordance with Enforcement Instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred provided that, if the Security Agent has commenced Enforcement Action on the instructions of the Majority Senior Secured Creditors, the Majority Super Senior Creditors shall not be entitled to instruct the Security Agent to cease such Enforcement Action, save that the Majority Super Senior Creditors may take control of any such enforcement process where the Security Agent is required in accordance with any of sub-paragraphs (i) to (iv) above to act in accordance with Enforcement Instructions received from the Majority Super Senior Creditors, following which they can give instructions to the Security Agent to take Enforcement Action which is not prejudicial nor would jeopardise any Enforcement Action commenced by the Majority Senior Secured Creditors or which is in relation to the Transaction Security which is not being enforced by the Majority Senior Secured Creditors.

13.3 Enforcement Instructions

(a) The Security Agent may refrain from enforcing the Transaction Security or taking any other action as to Enforcement unless instructed otherwise by the Instructing Group in accordance with Clause 13.2 (*Instructions to enforce*).

(b) Subject to Clause 13.2 (*Instructions to enforce*), the Instructing Group may give or refrain from giving instructions to the Security Agent to take action as to Enforcement as they see fit by way of the issuance of Enforcement Instructions.

(c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 13.3.

13.4 Manner of enforcement

If the Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 13.3 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Instructing Group shall instruct or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

13.5 Exercise of voting rights

(a) Each Creditor (other than a Primary Creditor) will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.

(b) The Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group provided that any such instructions have been given in accordance with Clause 13.3 (*Enforcement Instructions*).

13.6 Waiver of rights

To the extent permitted under applicable law and subject to Clause 13.3 (*Enforcement Instructions*), Clause 13.4 (*Manner of enforcement*), Clause 15.2 (*Proceeds of Distressed Disposals and Debt Disposals*) and Clause 17 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

13.7 Duties owed

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 15.2 (*Proceeds of Distressed Disposals and Debt Disposals*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

13.8 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Transaction Security Documents except through the Security Agent.

13.9 Alternative Enforcement Actions

After the Security Agent has commenced Enforcement, it shall not accept any subsequent instructions as to Enforcement (save in the case where paragraph (c) of Clause 13.2 (*Instructions to enforce*) applies) from anyone other than the Instructing Group that instructed it to commence such enforcement of the Transaction Security, regarding any other enforcement of the Transaction Security over or relating to shares or assets directly or indirectly the subject of the enforcement of the Transaction Security which has been commenced (and, for the avoidance of doubt, during any enforcement of the Transaction Security only paragraph

(b) of the definition of Instructing Group shall be applicable in relation to any instructions given to the Security Agent by the Instructing Group under this Agreement).

13.10 Consultation period

(a) Subject to the Transaction Security having become enforceable in accordance with its terms, if any group of Creditors entitled to give instructions to enforce the Transaction Security or to take any other action as to Enforcement in accordance with Clause 13.2 (*Instructions to enforce*) wishes to issue Enforcement Instructions, the Creditor Representative representing that group of Creditors shall deliver a copy of the relevant Initial Enforcement Notice to the Security Agent and to each other Creditor Representative.

(b) Subject to paragraph (c) below, as soon as reasonably practicable after receipt of an Initial Enforcement Notice, each of the Creditor Representatives will consult in good faith with each other and the Security Agent for a period of not less than ten (10) Business Days (or such shorter period as each Creditor Representative and the Security Agent shall agree) from the date such Initial Enforcement Notice is received by such persons (or such shorter period as the relevant parties may agree) (the "**Consultation Period**") with a view to co-ordinating the Enforcement Instructions provided that, in the case of an Initial Enforcement Notice delivered by the Majority Super Senior Creditors (or the relevant Creditor Representative(s) on their behalf), the Consultation Period shall commence on such date specified by the Majority Super Senior Creditors (or the relevant Creditor Representative(s) on their behalf) which is no earlier than ten (10) Business Days prior to the earliest date on which the Security Agent is required in accordance with Clause 13.2 (*Instructions to enforce*) to act in accordance with Enforcement Instructions received from the Majority Super Senior Creditors.

(c) No Consultation Period shall be required if:

(i) the Transaction Security has become enforceable as a result of an Insolvency Event in relation to a Debtor; or

(ii) the Instructing Group or the Creditor Representative(s) representing the Creditors comprising the Instructing Group determines in good faith (and notifies the other Creditor Representatives and the Security Agent) that to enter into such consultations and delay the commencement of Enforcement could reasonably be expected to have a material adverse effect on (A) the Security Agent's ability to enforce any of the Transaction Security or (B) the expected realisation proceeds of any Enforcement.

(d) Following the expiry of a Consultation Period or if no Consultation Period is required pursuant to paragraph (c) above, the Security Agent shall be entitled to act on any Enforcement Instructions given to it by the group of Creditors entitled to give instructions to enforce the Transaction Security or to take any other action as to Enforcement in accordance with Clause 13.2 (*Instructions to enforce*) and Clause 13.4 (*Manner of enforcement*).

14 NON-DISTRESSED DISPOSALS

14.1 Definitions

In this Clause 14:

(a) "**Disposal Proceeds**" means the proceeds of a Non-Distressed Disposal; and

(b) "**Non-Distressed Disposal**" means a disposal of:

(i) an asset of a member of the Group; or

(ii) an asset which is subject to the Transaction Security,

to a person or persons outside the Group where that disposal is not a Distressed Disposal.

14.2 Facilitation of Non-Distressed Disposals

(a) If, in respect of:

(i) a Non-Distressed Disposal; or

(ii) any merger, consolidation, reorganisation or transaction whereby a release of an asset is required to effect such disposal, merger, consolidation, reorganisation or transaction (subject to any obligation under the Primary Debt Documents to re-grant Security over such asset),

which, in each case, is expressly permitted by the Primary Debt Documents (a "**Permitted Transaction**") and:

(A) the Creditor Representative in respect of each Facility notifies the Security Agent that the Permitted Transaction is expressly permitted under the Debt Documents relating to that Facility;

(B) two directors of the Parent certify for the benefit of the Security Agent that the Permitted Transaction and, if the asset the subject of the Permitted Transaction constitutes Charged Property, the release of Transaction Security, is expressly permitted under the Debt Documents (provided that such certificate has been provided to the relevant Creditor Representative(s) and the relevant Creditor Representative(s) have not objected to such certificate within 5 Business Days of receipt of such certificate) or the Creditor Representative in respect of each Facility Agreement and Note Indenture, authorises the release,

the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraph (b) below:

(1) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;

(2) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's Property; and

(3) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (1) and (2) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.

(b) Each release of Transaction Security or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposal or consummation of the relevant Permitted Transaction.

14.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Super Senior Liabilities or the Senior Secured Liabilities then those Disposal Proceeds shall be applied in accordance with the Debt Documents and the consent of any other Party shall not be required for that application.

14.4 Release of Unrestricted Subsidiaries

If a member of the Group is designated as an Unrestricted Subsidiary in accordance with the terms of each of the Senior Secured Debt Documents and the Super Senior Debt Documents, the Security Agent is irrevocably authorised and obliged (at the cost

of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor):

(a) to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's assets; and

(b) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraph (a) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable or as requested by the Parent.

15 DISTRESSED DISPOSALS

15.1 Facilitation of Distressed Disposals

Subject to Clause 15.3 (*Primary Creditor Protection*), if a Distressed Disposal is being effected the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor):

(a) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;

(b) *release of liabilities and Transaction Security on a share sale (Debtor)*: if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor, to release:

(i) that Debtor and any Subsidiary of that Debtor from all or any part of:

(A) its Borrowing Liabilities;

(B) its Guarantee Liabilities; and

(C) its Other Liabilities;

(ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and

(iii) any other claim of a Subordinated Creditor, an Intra-Group Lender or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

(c) *release of liabilities and Transaction Security on a share sale (Holding Company)*: if the asset subject to the Distressed Disposal consists of shares in the capital of any Holding Company of a Debtor, to release:

(i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:

(A) its Borrowing Liabilities;

(B) its Guarantee Liabilities; and

(C) its Other Liabilities;

(ii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and

(iii) any other claim of a Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

(d) *facilitative disposal of liabilities on a share sale or Appropriation*: if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:

(i) the Liabilities (other than Liabilities due to any Creditor Representative or Arranger); or

(ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "**Transferee**") will not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors provided that notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement;

(e) *sale of liabilities on a share sale or Appropriation*: if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:

(i) the Liabilities (other than Liabilities due to any Creditor Representative or Arranger); or

(ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:

(A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than to any Creditor Representative or Arranger); and

(B) all or part of any other Liabilities (other than Liabilities owed to any Creditor Representative or Arranger) and the Debtors' Intra-Group Receivables,

on behalf of, in each case, the relevant Creditors and Debtors;

(f) *transfer of obligations in respect of liabilities on a share sale or Appropriation*: if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Security Agent decides to transfer to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

(i) the Intra-Group Liabilities; or

(ii) the Debtors' Intra-Group Receivables,

to execute and deliver or enter into any agreement to:

(iii) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and

(iv) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.

15.2 Proceeds of Distressed Disposals and Debt Disposals

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 17 (*Application of Proceeds*) and, to the extent that any Liabilities Sale has occurred, as if that Liabilities Sale had not occurred.

15.3 Primary Creditor Protection

(a) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (b) of Clause 15 (*Distressed Disposals*)) effected by, or at the request of, the Security Agent, the Security Agent shall take reasonable care to obtain a fair market value having regard to the prevailing market conditions (though the Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or disposal of Liabilities in order to achieve a higher value).

(b) Prior to the Senior Secured Debt Discharge Date, if a Distressed Disposal, Appropriation, Liabilities sale or any other action taken under Clause 15.1 (*Facilitation of Distressed Disposals*) is being effected at a time the Security Agent is obliged to give effect to instructions from the Majority Super Senior Creditors to enforce the Transaction Security pursuant to Clause 13.2 (*Instructions to enforce*), unless the Creditors Representatives of the Senior Secured Debt Creditors agree otherwise, any Distressed Disposal or disposal of Liabilities which results in the release of any Borrowing Liabilities or Guarantee Liabilities in respect of Senior Secured Liabilities or the release of any Transaction Security securing the Senior Secured Liabilities may, in each case, only be made if (and the requirement in paragraph (a) above shall be satisfied (and as between the Creditors and the Debtors shall be conclusively presumed to be satisfied) and the Security Agent will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law only if:

(i)

(A) the consideration in respect of such Distressed Disposal or disposal of Liabilities is paid or payable in cash (or substantially all in cash); or

(B) the consideration in respect of such Distressed Disposal or disposal of Liabilities does not comprise cash (or substantially all cash) in circumstances where the Security Agent (acting reasonably) determines that the cash consideration payable under the highest of the other bona fide and fully committed offers made in relation to that Distressed Disposal or disposal of Liabilities is less than the outstanding Super Senior Liabilities, in which case the non-cash consideration can, without limitation, take the form of the Super Senior Creditors (or any of them acting alone or together) bidding by any appropriate mechanic all or part of their Super Senior Liabilities (such that the Super Senior Liabilities would, on completion, be discharged to the extent of an amount equal to the amount of the offer made by the relevant Super Senior Creditors),

and the proceeds of such Distressed Disposal or disposal of Liabilities are applied in accordance with Clause 17 (*Application of Proceeds*);

(ii)

(A)

(1) the sale, disposal or transfer is made pursuant to a public auction or a competitive bid process (which auction or process, without prejudice to the requirements of sub-paragraph (b)(i) above, may be (but does not have to be) completed by a process or proceedings approved by or supervised by, or on behalf of, any court of law) or any other process agreed to by the Creditor Representative(s) of the Senior Secured Debt Creditors in which, if such auction or process attracts, or could reasonably be expected to result in attracting, no bidders or a bona fide and fully committed cash bid the cash consideration in relation to which is determined by the Security Agent (acting reasonably) to be less than the outstanding amount of the Super Senior Liabilities, the Super Senior Creditors (or any of them acting alone or together), are (subject to applicable law) entitled to participate as bidders or financiers to the potential purchaser(s) or, following the sale, disposal or transfer, the Group; and

(2) the Security Agent (or the relevant member of the Group) shall have, in respect of such auction or process, consulted with an internationally recognised investment bank or internationally recognised accounting firm selected by the Security Agent (acting reasonably) with respect to the procedures which may reasonably be expected to be used to obtain a fair market price in the then prevailing market conditions (taking into account all relevant circumstances and with a view to facilitating a prompt and expeditious sale at a fair market price in the prevailing market conditions although there shall be no obligation to postpone any such sale in order to achieve a higher price), and shall have implemented (to the extent permitted by law) in all material respects the procedures recommended by such bank or firm in relation to such auction or process, unless the Security Agent (acting in good faith) confirms that it has reasonable grounds to believe that implementation of all or part of such recommended procedures is not in the best interests of the Senior Secured Creditors; or

(B) in circumstances where the Security Agent has received an opinion (including an enterprise valuation of the Group and which can be relied upon by the Security Agent and disclosed to the Creditor Representative(s) of the Senior Secured Debt Creditors (but which may be given on the basis that the liability of the relevant bank or firm in giving the opinion is limited to an amount of at least the amount of its fees in respect of such engagement)) from:

(1) an internationally recognised investment bank or internationally recognised accounting firms; or

(2) if it is not practicable for the Security Agent to appoint any such bank or firm on commercially reasonable terms (including for reasons of conflicts of interest), another third party professional firm which is regularly engaged in providing valuations in respect of the relevant type of assets but which is not a Senior Secured Creditor or affiliated thereto,

(in each case not being the firm appointed as the relevant Debtor's administrator or other relevant officer holder) selected by the Security Agent (acting reasonably) confirming that the sale, disposal or transfer price is fair from a financial point of view taking into account all relevant circumstances, although there shall be no obligation to postpone any such sale, disposal or transfer in order to achieve a higher price; and

(iii) at the time of completion of the sale, disposal or transfer: (aa) the Borrowing Liabilities, Guarantee Liabilities and (to the extent permitted by this Agreement) Other Liabilities owing to each of the Senior Secured Creditors by the Debtors being disposed of (each a "**Relevant Claim**") are (to the same extent) released and discharged (and are not assumed by the purchaser and/or its Affiliates); and (bb) all the Transaction Security granted in favour of all the Secured Parties over the assets sold or disposed of is released and discharged unless:

(A) the Creditor Representative(s) of the Senior Secured Debt Creditors, acting reasonably and in good faith, determine that a sale, disposal or transfer of a Relevant Claim will facilitate a recovery by the Senior Secured Creditors that is greater than the one they would achieve if such Relevant Claim was released or discharged but is nevertheless less than the outstanding Senior Secured Liabilities, which shall be deemed to be the case if there are no bidders or if the Creditor Representative(s) of the Senior Secured Debt Creditors (acting reasonably) determines that there are no bona fide and fully committed cash bids in excess of the amount of the Senior Secured Liabilities; and

(B) the Creditor Representative(s) of the Senior Secured Debt Creditors give notice of their determination to the Security Agent,

in which case the Security Agent shall be entitled immediately to sell and transfer the Relevant Claims to such purchaser (or an Affiliate of such purchaser) (or, if sub-paragraph (b)(ii)(A)(1) above applies and a Senior Secured Creditor is the successful bidder (or financier) or beneficiary of the relevant disposal as contemplated in paragraph (ii) above, such Senior Secured Creditor shall be able to retain its Relevant Claim or any part thereof (which shall be valued at par)).

(c) Prior to the Super Senior Debt Discharge Date, if a Distressed Disposal, Appropriation, Liabilities sale or any other action taken under Clause 15.1 (*Facilitation of Distressed Disposals*) is being effected at a time the Security Agent is obliged to give effect to instructions from the Majority Senior Secured Creditors to enforce the Transaction Security pursuant to Clause 13.2 (*Instructions to enforce*), the Security Agent is not authorised to release any Transaction Security or release, dispose of, sell or transfer any Borrowing Liabilities or Guarantee Liabilities owed to any Super Senior Creditor or otherwise take any action described in Clause 15.1 (*Facilitation of Distressed Disposals*) unless the proceeds from any such action taken by the Security Agent are sufficient to discharge the Super Senior Liabilities in full and in cash (or, in the case of any contingent Liability relating to a Letter of Credit or Ancillary Facility, made the subject of cash collateral arrangements) or the Creditor Representative(s) of the Super Senior Creditors have consented thereto.

(d) This Clause 15.3 is for the benefit of the Senior Secured Creditors, the Super Senior Creditors and the Security Agent only.

15.4 Security Agent's actions

For the purposes of Clause 15.1 (*Facilitation of Distressed Disposals*), the Security Agent shall act:

(a) on the instructions of the Instructing Group; or

(b) in the absence of any such instructions as the Security Agent sees fit.

16 FURTHER ASSURANCE – DISPOSALS AND RELEASES

Each Creditor and Debtor will:

(a) do all things that the Security Agent requests in order to give effect to Clause 14 (*Non-Distressed Disposals*) and Clause 15 (*Distressed Disposals*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and

(b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 14 (*Non-Distressed Disposals*) or Clause 15 (*Distressed Disposals*) as the case may be.

17 APPLICATION OF PROCEEDS

17.1 Order of application

Subject to Clause 17.2 (*Prospective liabilities*) and Clause 17.3 (*Treatment of Cash Cover, Lender Cash Collateral and ABL Collateral*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 17, the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 17), in the following order of priority:

(a) in discharging any sums owing to the Security Agent (other than pursuant to Clause 20.3 (*Parallel debt*)), any Receiver or any Delegate and in payment to the Creditor Representatives of the Creditor Representative Amounts;

(b) in discharging all costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 9.6 (*Further assurance – Insolvency Event*);

(c) in payment or distribution to the Creditor Representatives in respect of any Super Senior Liabilities on its own behalf and on behalf of the Super Senior Creditors for which it is the Creditor Representative for application towards the discharge of:

(i) the Super Senior Liabilities (in accordance with the terms of the relevant Super Senior Debt Documents) on a *pro rata* basis between Super Senior Liabilities under separate Super Senior Facility Agreements; and

(ii) the Super Senior Liabilities (in accordance with the terms of the relevant Super Senior Debt Documents) on a *pro rata* basis between Super Senior Liabilities under separate Super Senior Note Indentures,

on a *pro rata* basis between paragraph (i) and paragraph (ii) above;

(d) in payment or distribution to:

(i) the Creditor Representatives in respect of any Senior Secured Debt Liabilities on its own behalf and on behalf of the Senior Secured Debt Creditors for which it is the Creditor Representative; and

(ii) the Hedge Counterparties,

for application towards the discharge of:

(A) the Senior Secured Debt Liabilities (in accordance with the terms of the relevant Senior Secured Debt Documents) on a *pro rata* basis between Senior Secured Debt Liabilities under separate Senior Secured Facility Agreements;

(B) the Senior Secured Debt Liabilities (in accordance with the terms of the relevant Senior Secured Debt Documents) on a *pro rata* basis between Senior Secured Debt Liabilities under separate Senior Secured Note Indentures; and

(C) the Hedging Liabilities on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty,

on a *pro rata* basis between paragraph (A), paragraph (B) and paragraph (C) above;

(e) in payment to the Secured Parties for application towards the discharge of any *Soulte* which is payable by the Secured Parties to any Debtor pursuant to Clause 9.8 (*Payment of the Soulte*).

(f) if none of the Debtors is under any further actual or contingent liability under any Primary Debt Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and

(g) the balance, if any, in payment or distribution to the relevant Debtor.

17.2 Prospective liabilities

Following a Distress Event the Security Agent may, in its discretion hold any amount of the Recoveries in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) as the Security Agent shall think fit (the interest being credited to the relevant account for so long as the Security Agent shall think fit for later application under Clause 17.1 (*Order of application*) in respect of:

(a) any sum to any Security Agent, any Receiver or any Delegate; and

(b) any part of the Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

17.3 Treatment of Cash Cover, Lender Cash Collateral and ABL Collateral

(a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any Cash Cover which has been provided for it in accordance with the relevant Facility Agreement.

(b) To the extent that any Cash Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

(i) to the Relevant Issuing Bank or Relevant Ancillary Lender towards the discharge of the Liabilities for which that Cash Cover was provided; and

(ii) the balance, if any, in accordance with Clause 17.1 (*Order of application*).

(c) To the extent that any Cash Cover is held with the Relevant Issuing Bank or Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that Cash Cover.

(d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Lender Cash Collateral provided for it in accordance with the relevant Agreement.

(e) Nothing in this Agreement shall require or permit any Party to:

(i) enforce the Transaction Security or take any other action as to Enforcement;

(ii) apply any amount received or recovered in connection with the realisation or enforcement of all or any part of the ABL Collateral,

in each case, in a manner inconsistent with the ABL Intercreditor (at such time as the ABL Intercreditor is in force). For the avoidance of doubt, notwithstanding anything to the contrary in Clause 17.1 (*Order of application*), if the Security Agent is required under the ABL Intercreditor Agreement to apply Recoveries in respect of ABL Collateral in payment to any person(s) not specified in Clause 17.1 (*Order of application*) in priority to any person(s) specified in Clause 17.1 (*Order of application*), the Security Agent shall be entitled to so apply those Recoveries and shall otherwise be required to apply those Recoveries in the order specified in Clause 17.1 (*Order of application*).

17.4 Investment of cash proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 17.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of any cash proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 17.

17.5 Currency conversion

(a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may:

(i) convert any moneys received or recovered by the Security Agent (including, without limitation, any cash proceeds) from one currency to another, at the Security Agent's Spot Rate of Exchange; and

(ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Security Agent's Spot Rate of Exchange.

(b) The obligations of any Debtor to pay in the due currency shall only be satisfied:

(i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and

(ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

17.6 Permitted Deductions

The Security Agent shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as the Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

17.7 Good Discharge

(a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:

(i) may be made to the relevant Creditor Representative on behalf of its Primary Creditors;

(ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 17.3 (*Treatment of Cash Cover, Lender Cash Collateral*); or

(iii) shall be made directly to the Hedge Counterparties.

(b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent.

(c) The Security Agent is under no obligation to make the payments to the Creditor Representatives or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Primary Creditor are denominated pursuant to the relevant Debt Document.

17.8 Calculation of Amounts

For the purpose of calculating any person's share of any amount payable to or by it, the Security Agent shall be entitled to:

(a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate at which the Security Agent is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and

(b) assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

17.9 Disentitled Creditors

Notwithstanding Clause 17.1 (*Order of application*), to the extent that the Recoveries held by the Security Agent are insufficient to discharge the Liabilities owed to all of the Primary Creditors in a particular paragraph of Clause 17.1 (*Order of application*) (a "**Priority Class**") and this is due to the fact that a Primary Creditor within that Priority Class (a "**Disentitled Creditor**") is:

(a) not recognised as "creditor" or as "pledgee creditor" under the relevant Spanish Transaction Security due to its failure to:

(i) grant a power of attorney to the Security Agent;

(ii) notarise the relevant Spanish Transaction Security or transfer or assignment of the relevant Debt Document; or

(iii) take any other action required by the Security Agent,

in each case as may be necessary in accordance with Spanish law so as to create or preserve the validity and effectiveness of any such Spanish Transaction Security; or

(b) a specially related person (*persona especialmente relacionada*) pursuant to articles 281 to 284 of the Spanish Insolvency Act or any other Spanish law or regulation which subordinates the right of such Primary Creditor to receive recoveries by application of law,

(c) then the amount to be applied by the Security Agent in discharge of the Liabilities of that Priority Class shall be distributed to the other Primary Creditors of that Priority Class and the Disentitled Creditor shall not be entitled to receive any part of that amount, including pursuant to Clause 18.3 (*Equalisation*) but excluding Clause 18.4 (*Turnover of enforcement proceeds*) which shall continue to apply.

18 EQUALISATION

18.1 Equalisation Definitions

For the purposes of this Clause 18:

"**Enforcement Date**" means the first date (if any) on which a Primary Creditor takes enforcement action of the type described in paragraphs (a)(i), (a)(iii), (a)(iv) or (c) of the definition of "**Enforcement Action**" in accordance with the terms of this Agreement.

"**Exposure**" means:

(a) in relation to a Lender under a particular Facility Agreement, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under that Facility Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Lenders pursuant to any loss-sharing arrangement in that Facility Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under that Facility Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:

(i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that Cash Cover has been provided by a Debtor in respect of that amount and is available to that Lender pursuant to the relevant Cash Cover Document; and

(ii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that Cash Cover has been provided by a Debtor in respect of that amount and is available to the party it has been provided for pursuant to the relevant Cash Cover Document; and

(b) in relation to a Noteholder under a particular Note Indenture, the Liabilities under that Note Indenture owed by the Debtors to that Noteholder.

(c) in relation to a Hedge Counterparty:

(i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and

(ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:

(A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or

(B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction

if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

such amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

"**Utilisation**" means a "Utilisation" (or any substantially equivalent term) under and as defined in the relevant Facility Agreement.

18.2 Implementation of equalisation

(a) The provisions of this Clause 18 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.

(b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 18 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the same Creditor Class shall make appropriate adjustment payments amongst themselves.

18.3 Equalisation

If, for any reason, the Liabilities of any Creditor Class remain unpaid after the Enforcement Date and the resulting losses are not borne by the Creditors in that Creditor Class in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Creditors in that Creditor Class at the Enforcement Date, the Creditors in that Creditor Class will make such payments amongst themselves as the Security Agent shall require to put the Creditors in that Creditor Class in such a position that (after taking into account such payments) those losses are borne in those proportions.

18.4 Turnover of enforcement proceeds

If:

(a) the Security Agent or a Creditor Representative is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to the relevant Primary Creditors but is entitled to pay or distribute those amounts to Creditors (such Creditors, the "**Receiving Creditors**") who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the relevant Primary Creditors; and

(b) the applicable Discharge Date in respect of the Liabilities of the relevant Primary Creditors to whom the Security Agent did not make that payment or distribution has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments or distributions to the relevant Primary Creditors as the Security Agent shall require to place the relevant Primary Creditors in the position they would have been in had such amounts been available for application against the relevant Liabilities provided that this Clause 17.4 shall not apply to any receipt or recovery that has been distributed by a Note Trustee in accordance with the applicable Note Indenture unless that Note Trustee had received at least two Business Days' prior notice that an Enforcement Date, an Acceleration Event or an Insolvency Event in relation to a Debtor has occurred or that the receipt or recovery falls within Clause 11.2 (*Turnover by the Primary Creditors*) in each case prior to distribution of the relevant amount.

18.5 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 18, the Security Agent shall send notice to each Hedge Counterparty and the relevant Creditor Representative (on behalf of the relevant Creditors) requesting that it notify it of, respectively, its Exposure and that of each relevant Creditors (if any).

18.6 Default in payment

If a Creditor fails to make a payment due from it under this Clause 18, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Creditor(s) in respect of costs) but shall have no liability or obligation towards such Creditor(s) or any other Primary Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

19 NEW DEBT FINANCINGS

19.1 New Debt Financings

(a) Notwithstanding anything to the contrary in this Agreement or a Security Document, each Party irrevocably agrees that any indebtedness or facility (including any indebtedness or facility entered into before the date of this Agreement or already subject to this Agreement) of any member of the Group which is not prohibited by the terms of the Primary Financing Documents may:

(i) be treated and designated as any class of Primary Creditor Liabilities;

(ii) subject to Clause 18.2 (*Security: New Debt Financing*), be secured by any Transaction Security; and

(iii) be treated and rank as such for the purposes of this Agreement,

(any such indebtedness being a "**New Debt Financing**").

(b) On the date on which each Creditor Representative in respect of any New Debt Financing (and any other required person) accedes to this Agreement in the required capacity and the Parent designates that New Debt Financing as the relevant class of Primary Creditor Liabilities, in each case, in accordance with Clause 22 (*Changes to the Parties*) (or such later date as agreed between the Parent and the Security Agent), the Liabilities in respect of that New Debt Financing shall become subject to the terms of this Agreement as so designated.

19.2 Security: New Debt Financing

Notwithstanding anything to the contrary in any other Debt Document, the Parties agree that, in order to facilitate any New Debt Financing, each Creditor Representative and the Security Agent (and any other Creditor party to a Transaction Security Document) are authorised and instructed by all Creditors (and in each case are obliged at the request and cost of the Parent) to enter into any new Security Document (including any Lower Ranking Security) or amend any terms of an existing Security Document provided that:

(a) any new Transaction Security in relation to such New Debt Financing is not prohibited by the terms of the Primary Debt Documents and is granted otherwise in accordance with this Agreement and the Primary Debt Documents; and

(b) each of the Secured Parties agrees:

(i) not to take any action to challenge the validity or enforceability of the additional Transaction Security by reason of it being Lower Ranking Security; and

(ii) that additional Transaction Security may be granted by any Debtor in order to secure all or any part of any Hedging Liabilities and/or any New Debt Financing.

19.3 Further assurance

(a) The Creditors (or a Creditor Representative on their behalf) will (at the cost of the Parent) enter into any documentation required by the Parent to ensure that any obligations and liabilities incurred by the Debtors in respect of such New Debt Financing will share in the relevant Transaction Security and/or have the ranking permitted to be conferred upon it in accordance with the relevant Primary Debt Documents (including, without limitation, executing any amendment to this Agreement, entering into any additional or replacement intercreditor agreement and any other Primary Debt Documents to reflect, enable and/or facilitate any such New Debt Financing to be incurred).

(b) Each Primary Creditor authorises its Creditor Representative (if applicable) to enter into any release document in connection with a full repayment, prepayment or refinancing of that Creditor's Primary Creditor Liabilities.

19.4 Debtor confirmations

(a) For the purpose of this Clause 18.4, "**Relevant Secured Liabilities**" means, in relation to any Security Document, the relevant Liabilities secured by that Security Document and, in relation to any Primary Debt Document, the relevant Liabilities guaranteed by that Primary Debt Document.

(b) Each Debtor confirms its intention that:

(i) any amendment to a Primary Debt Document which is not prohibited by this Agreement or otherwise made in accordance with this Agreement is within the scope of the Relevant Secured Liabilities; and

(ii) Relevant Secured Liabilities extend to any amount payable by it under or in connection with the relevant Primary Debt Document as amended.

(c) Each Debtor agrees that the confirmations in paragraph (b) above apply regardless of:

(i) why or how a Primary Debt Document is amended (including the extent of the amendment and any change in or addition to the parties);

(ii) whether any amount payable by a Debtor under or in connection with the amended Primary Debt Document in any way relates to any amount that would or may have been payable had the amendment not taken place;

(iii) the extent to which its liability under any Primary Debt Document (whether present or future, actual or contingent), or any right it may have as a result of entering into or performing its obligations under any Primary Debt Document, changes or may change as a result of the amendment; and

(iv) whether it was aware of or consented to the amendment.

(d) Each Debtor further acknowledges and agrees that (to the extent permitted by the terms of the Primary Debt Documents):

(i) the Relevant Secured Liabilities are intended to cover all obligations of the relevant class(es) owing to the relevant Secured Parties under the relevant Primary Debt Document from time to time (including any New Debt Financing); and

(ii) the Security created under the relevant Security Document is intended as security for the payment and discharge of all of the Relevant Secured Liabilities without the need for any amendment to the relevant Security Document or for any supplemental, confirmatory or subsequent ranking security document (other than with respect to any Spanish Security Document which, to the extent legally possible, will be amended and/or confirmed, or equal or subsequent ranking security documents may be created, in order to secure the

Relevant Secured Liabilities owing to the relevant Secured Parties under the relevant Primary Debt Document from time to time (including any New Debt Financing)). Each Secured Party irrevocably authorizes the Security Agent to execute all such documents as may reasonably be considered necessary in order to give effect to the providing of any new Spanish Security Document, including any amendment and/or confirmation.

(e) Each Debtor further acknowledges and agrees that paragraphs (b) to (d) above shall apply (to the extent permitted by the terms of the Primary Debt Documents) whether or not:

(i) any of the Relevant Secured Liabilities or Primary Debt Documents exist on the date of the relevant Security Document (or, as the case may be, the date on which it became a party to the relevant Security Document);

(ii) the amount of the Relevant Secured Liabilities is increased or the terms of any of the Primary Debt Documents are more onerous (including in relation to the interest rate and other pricing terms);

(iii) any additional obligations are added to the Relevant Secured Liabilities by way of designating a document as a Primary Debt Document or any person as a Secured Party, and whether or not that document or person is designated directly, or indirectly as a result of that document or person being of a type or class which falls within the then current definition of Primary Debt Documents or Secured Party;

(iv) that Debtor or any person incurring the Relevant Secured Liabilities is a party to the Primary Debt Documents on the date of the relevant Security Document (or, as the case may be, the date on which it became a party to the relevant Security Document);

(v) any of the Secured Parties changes (including a change to all or substantially all of the Secured Parties) or any amendment is made to the definition of Secured Party (or any defined term in any Primary Debt Document that is referred to in the definition of Secured Party to include an additional person as a Secured Party); or

(vi) any change increases the likelihood that any Security will be enforced.

(f) Notwithstanding paragraphs (b) to (e) above, none of the Relevant Secured Liabilities shall extend to any Primary Creditor Liabilities (including any New Debt Financing) which are not originally contemplated by the relevant Security Document or Primary Debt Document without the consent of the Parent and any extension of the Relevant Secured Liabilities contemplated by paragraphs (b) to (e) above shall be subject to the Agreed Security Principles.

(g) Each Debtor irrevocably authorises the Parent to give effect to the terms of or facilitate the implementation, assumption or establishment of any New Debt Financing entered into or assumed in compliance with this Agreement.

20 THE SECURITY AGENT

20.1 Appointment of the Security Agent

(a) Each other Secured Party appoints the Security Agent in accordance with this Clause 20 to act as security trustee under this Agreement and in connection with the relevant Primary Debt Documents, the relevant Security Documents and this Agreement in relation to any security interest which is expressed to be or is construed to be governed by English law or any other law from time to time designated by the Security Agent and the Parent.

(b) Except as expressly provided in paragraph (a) above, and without limiting or affecting Clause 19.3 (*Parallel Debt*), each other Secured Party appoints the Security Agent in accordance with this Clause 20 to act as security agent, joint and several creditor or beneficiary of a parallel debt (as the case may be) under this Agreement and in connection with the relevant Primary Debt Documents and the relevant Security Documents.

(c) Notwithstanding paragraphs (a) and (b) above, each other Secured Party (i) appoints the Security Agent to act as agent (*mandataire*) pursuant to article 1984 of the French *Code Civil* for the purpose of executing any French Law Security

Documents in its name, (ii) confirms its approval of the French Law Security Documents creating or expressed to create a Security benefiting to it and any Security created or to be created pursuant thereto and, (iii) irrevocably authorises, empowers and directs the Security Agent (by itself or by such person(s) as it may nominate) on its behalf, to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the French Law Security Documents, to take any action and exercise any right, power, authorities and discretion upon the terms and conditions set out in this Agreement under or in connection with the French Law Security Documents, in each case together with any other rights, powers and discretions which are incidental thereto, it being understood that each Secured Party (other than the Security Agent) shall issue special powers of attorneys in all cases where the exercise of powers granted under this Agreement requires the issuance of any such special powers of attorney, and the Security Agent accepts such appointment, it being agreed that the provisions of this paragraph (c) are governed by the laws of France.

(d) Each other Secured Party authorises the Security Agent on its behalf to: (i) execute each Security Document expressed to be executed by the Security Agent on its behalf; and (ii) perform such duties, obligations and responsibilities and exercise such rights, authorities, discretions and powers under the Primary Debt Documents to which the Security Agent is a party as are specifically delegated to the Security Agent by the terms thereof, together with such rights, powers and discretions as are reasonably incidental thereto including, without limitation, enforcing the Transaction Security in accordance with the terms of this Agreement and the relevant Transaction Security Documents

20.2 Security Agent as trustee or agent

(a) Unless otherwise set out under the relevant Transaction Security Document due to matters of applicable law, the Security Agent declares that it holds the Security Property on trust or (where the Security Agent may not hold the relevant Security as trustee under applicable law) as agent for the Secured Parties on the terms contained in this Agreement unless expressly agreed otherwise.

(b) Each of the Primary Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

20.3 Parallel debt

(a) Each Debtor hereby irrevocably and unconditionally undertakes (such undertaking and the obligations and liabilities which are a result thereof, hereinafter being referred to as its "**Parallel Debt**") to pay to the Security Agent an amount equal to and in the currency of the aggregate amount payable by it to any Secured Party under any Debt Document (the "**Principal Obligations**") in accordance with the terms and conditions of such Principal Obligations. The Parallel Debt of each Debtor shall become due and payable as and when its Principal Obligations become due and payable.

(b) Each of the Parties acknowledges that (i) the Parallel Debt of each Debtor (a) constitutes an undertaking, obligation and liability of such Debtor to the Security Agent (in its personal capacity and not in its capacity as agent) which is separate and independent from, and without prejudice to, its Principal Obligations and (b) represents the Security Agent's own claim to receive payment of such Parallel Debt from such Debtor and (ii) the Security created under the Debt Documents to secure the Parallel Debt is granted to the Security Agent in its capacity as sole creditor of the Parallel Debt.

(c) Each of the Parties agrees that:

(i) the Parallel Debt of each Debtor shall be automatically decreased and discharged to the extent that its Principal Obligations have been irrevocably paid or (in the case of guarantee obligations) discharged;

(ii) the Principal Obligations of each Debtor shall be automatically decreased and discharged to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged;

(iii) the amount of the Parallel Debt of a Debtor shall at all times be equal to the amount of its Principal Obligations;

(iv) the aggregate amount outstanding owed by the Debtors under the Debt Documents (including under this Clause 19.3) at any time shall not exceed the amount of the Principal Obligations at that time; and

(v) the Guarantee Limitations and any other limitations of a similar nature deriving from any other Primary Debt Document shall (without double counting) apply to the Parallel Debt in the same manner as to the Principal Obligations.

(d) All moneys received or recovered by the Security Agent pursuant to this Clause 19.3, and all amounts received or recovered by the Security Agent from or by the enforcement of any Transaction Security granted to secure the Parallel Debt, shall be applied in accordance with Clause 17 (*Application of Proceeds*).

(e) The rights of the Secured Parties (other than the Security Agent) to receive payment of the Principal Obligations of each Debtor are several and separate and independent from, and without prejudice to, the rights of the Security Agent to receive payment under the Parallel Debt.

(f) Without limiting or affecting a Security Agent's rights against the Debtors (whether under this Clause 19.3 or under any other provision of any Primary Debt Document), each Debtor acknowledges that:

(i) nothing in this Clause 19.3 shall impose any obligation on the Security Agent to advance any sum to any Debtor or otherwise under any Primary Debt Document, except, if applicable, in its capacity as a Primary Creditor; and

(ii) for the purpose of any vote taken under any Primary Debt Document, a Security Agent shall not be regarded as having any participation or commitment other than, if applicable, those which it has in its capacity as a Primary Creditor.

(g) The Security Agent may enforce performance of any Parallel Debt in its own name as an independent and separate right. This includes any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in respect of any kind of insolvency proceedings.

(h) Each Secured Party must, at the request of the Security Agent, perform any act required in connection with the enforcement of any Parallel Debt. This includes joining in any proceedings as co-claimant with the Security Agent to the extent necessary to allow enforcement of any Parallel Debt.

(i) This Clause 20.3 shall not apply for any security interest which is expressed to be or is construed to be governed by Norwegian law.

20.4 Instructions

(a) The Security Agent shall:

(i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Instructing Group; and

(ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).

(b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.

(c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.

(d) Paragraph (a) above shall not apply:

(i) where a contrary indication appears in this Agreement;

(ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;

(iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 20.7 (*No duty to account*) to Clause 20.12 (*Exclusion of liability*), Clause 20.15 (*Confidentiality*) to Clause 20.22 (*Custodians and nominees*) and Clause 20.25 (*Acceptance of title*) to Clause 20.29 (*Disapplication of Trustee Acts*);

(iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:

(A) Clause 14 (*Non-Distressed Disposals*);

(B) Clause 17.1 (*Order of application*);

(C) Clause 17.2 (*Prospective liabilities*);

(D) Clause 17.3 (*Treatment of Cash Cover, Lender Cash Collateral*); and

(E) Clause 17.6 (*Permitted Deductions*).

(e) If giving effect to instructions given by the Instructing Group would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment. Nothing in this paragraph (e) shall oblige the Security Agent to consider or monitor the effect of any instruction delivered to it in accordance with this Agreement and the Security Agent shall have no liability to any Party whatsoever (including as a result of any corresponding delay) unless directly caused by the Security Agent's gross negligence or wilful misconduct, if in fact, such instructions do or do not have the effect of an Intercreditor Amendment.

(f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:

(i) it has not received any instructions as to the exercise of that discretion; or

(ii) the exercise of that discretion is subject to paragraph (d)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties.

(g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

(h) Without prejudice to the provisions of Clause 13 (*Enforcement of Transaction Security*) and the remainder of this Clause 20.4, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

20.5 Duties of the Security Agent

(a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.

(b) The Security Agent shall promptly:

(i) forward to each Creditor Representative and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor under any Debt Document; and

(ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.

(c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(d) Without prejudice to Clause 25.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Primary Creditors.

(e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.

(f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

20.6 No fiduciary duties to Debtors or Subordinated Creditors

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Debtor or any Subordinated Creditor.

20.7 No duty to account

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

20.8 Business with the Group

The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

20.9 Rights and discretions

(a) The Security Agent may:

(i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any instructions received by it from the Instructing Group, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;

(B) unless it has received notice of revocation, that those instructions have not been revoked; and

(C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied; and

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

(b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee or (where the Security Agent may not hold the relevant Security as trustee under applicable law) as security agent for the Secured Parties) that:

(i) no Default, Event of Default, termination event (however described) or Acceleration Event has occurred;

(ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and

(iii) each notice or request given or made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.

(c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Primary Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.

(e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

(f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:

(i) be liable for any error of judgment made by any such person; or

(ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.

(g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee or agent under this Agreement.

(h) The Security Agent shall not be obliged to appropriate any shares forming part of the Transaction Security, even if so instructed by the Instructing Group (or the Majority Super Senior Creditors or the Majority Senior Secured Creditors, as applicable to the extent they are entitled to give instructions under Clause 13 (*Enforcement of Transaction Security*)) and the Security Agent shall have no liability to any Party whatsoever as a result of not appropriating any such shares or taking any action or inaction in relation to this paragraph (h).

(i) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

(j) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

20.10 Responsibility for documentation

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

(a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property; or

(c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

20.11 No duty to monitor

The Security Agent shall not be bound to enquire:

(a) whether or not any Default has occurred;

(b) as to the performance, default or any breach by any Party of its obligations under any Debt Document; or

(c) whether any other event specified in any Debt Document has occurred.

20.12 Exclusion of liability

(a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:

(i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;

(ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;

(iii) any shortfall which arises on the enforcement or realisation of the Security Property; or

(iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:

(A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b) subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.

(c) Nothing in this Agreement shall oblige the Security Agent to carry out:

(i) any "know your customer" or other checks in relation to any person; or

(ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Primary Creditor,

on behalf of any Primary Creditor and each Primary Creditor confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

(d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection

with any Debt Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not foreseeable and whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

20.13 Primary Creditors' indemnity to the Security Agent

(a) Each Primary Creditor (other than any Creditor Representative) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Primary Creditors (other than any Creditor Representative) for the time being (or, if the Liabilities due to the Primary Creditors (other than any Creditor Representative) are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

(b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:

(i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or

(ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case as calculated in accordance with the relevant Hedging Agreement.

(c) Subject to paragraph (d) below, the Parent shall immediately on demand reimburse any Primary Creditor for any payment that Primary Creditor makes to the Security Agent pursuant to paragraph (a) above.

(d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Primary Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

20.14 Resignation of the Security Agent

(a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Primary Creditors and the Parent.

(b) Alternatively the Security Agent may resign by giving 30 days' notice to the Primary Creditors and the Parent, in which case the Required Super Senior Creditors and the Required Senior Secured Creditors may appoint a successor Security Agent.

(c) If the Required Super Senior Creditors and the Required Senior Secured Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Creditor Representatives and the Hedge Counterparties) may appoint a successor Security Agent.

(d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Parent shall, within five (5) Business Days of demand, reimburse the retiring Security Agent for the amount of all documented costs and expenses (including legal fees) reasonably incurred by it in making available such documents and records and providing such assistance.

(e) The Security Agent's resignation notice shall only take effect upon:

(i) the appointment of a successor; and

(ii) the transfer of all the Security Property to that successor.

(f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 20.27 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 19 and Clause 24.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

(g) The Required Super Senior Creditors and the Required Senior Secured Creditors may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

20.15 Confidentiality

(a) In acting as trustee or agent for the Secured Parties, the Security Agent shall be regarded as acting through its trustee or agent division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

(c) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

20.16 Information from the Creditors

Each Creditor shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

20.17 Credit appraisal by the Secured Parties

Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for

making its own independent appraisal and investigation of all risks arising under or in connection with any Debt Document including but not limited to:

(a) the financial condition, status and nature of each member of the Group;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;

(c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;

(d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

20.18 Security Agent's management time and additional remuneration

(a) Any amount payable to the Security Agent under Clause 20.13 (*Primary Creditors' indemnity to the Security Agent*), Clause 23 (*Costs and Expenses*) or Clause 24.1 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such daily or hourly rates as the Security Agent may notify to the Company, and is in addition to any other fee paid or payable to the Security Agent.

(b) Without prejudice to paragraph (a) above, in the event of:

(i) a Default;

(ii) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or

(iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

(c) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

20.19 Reliance and engagement letters

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

20.20 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

(a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor to any of the Charged Property;

(b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Debt Document or the Transaction Security;

(c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Transaction Security;

(d) take, or to require any Debtor to take, any step to monitor, maintain, register and perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or

(e) require any further assurance in relation to any Security Document.

20.21 Insurance by Security Agent

(a) The Security Agent shall not be obliged:

(i) to insure any of the Charged Property;

(ii) to require any other person to maintain any insurance; or

(iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

(b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Instructing Group requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

20.22 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust (or any asset held as agent) as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement (or any asset held as agent) and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

20.23 Delegation by the Security Agent

(a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.

(b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

(c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

20.24 Additional Security Agents

(a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or agent or as a co-trustee or co-agent jointly with it:

(i) if it considers that appointment to be in the interests of the Secured Parties;

(ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or

(iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Parent and the Primary Creditors of that appointment.

(b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.

(c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

20.25 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Debtor may have to any of the Charged Property and shall not be liable for, or bound to require any Debtor to remedy, any defect in its right or title.

20.26 Refrain from illegality

Notwithstanding anything else herein contained, the Security Agent may refrain without liability from doing anything that would or might in its opinion be contrary to any law of any state or jurisdiction (including but not limited to the European Union, the United States of America (in each case including any jurisdiction forming a part of it) and England & Wales) or any directive or regulation of any agency of any such state or jurisdiction or a breach of fiduciary duty or duty of confidentiality and the Security Agent may without liability do anything which is, in its opinion (acting reasonably), necessary to comply with any such law, directive, duty or regulation.

20.27 Winding up of trust

If the Security Agent, with the approval of each Creditor Representative and each Hedge Counterparty, determines that:

(a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and

(b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents,

then:

(i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and

(ii) any Security Agent which has resigned pursuant to Clause 20.14 (*Resignation of the Security Agent*) shall release, without recourse, representation, warranty or liability, all of its rights under each Security Document.

20.28 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Debt Documents shall, as applicable, be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

20.29 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

20.30 Intra-Group Lenders and Debtors: Power of Attorney

Each Intra-Group Lender and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

20.31 Appointment of the Security Agent as agent in relation to Spanish Security Documents; powers of attorney in favour of the Security Agent; Spanish law particularities

(a) Each of the Secured Parties hereby irrevocably authorises and, to the extent practicable, empowers each of the Agent and the Security Agent (whether or not through any employees or agents) (and to the extent it may have any interest therein, every other Party hereto) to execute on behalf of itself and each other Party all the necessary grantings, releases, enforcements or confirmations of any security created under any Spanish Security Document agreed upon in accordance with the Debt Documents. In particular, the Security Agent is empowered by each of the Secured Parties to:

(i) exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Security Agent under the Transaction Security Documents or any other Debt Document together with such powers and discretions as are reasonably incidental thereto;

(ii) notarise or raise into the status of Spanish Public Document any Debt Document;

(iii) appear before a Notary Public and accept any type of guarantee or security, whether personal or real, granted in favour of the Secured Parties (whether in its own capacity or as agent for other parties) over any and all shares,

rights, receivables, goods and chattels, fixing their price for the purposes of an auction and the address for serving of notices and submitting to the jurisdiction of law courts by waiving its own forum, and release such guarantees or security, all of the foregoing under the terms and conditions which the attorney may freely agree, signing the notarial deeds (*escrituras públicas*) or intervened policies (*póliza intervenidas*) that the attorney may deem fit;

(iv) ratify, if necessary or convenient, any such *escrituras públicas* or *pólizas intervenidas* executed by an orally appointed representative in the name or on behalf of the Secured Parties;

(v) execute and/or deliver any and all deeds, documents and do any and all acts and things required in connection with the execution of the Spanish Security Document, and/or the execution of any further notarial deed of amendment (*escritura pública de rectificación o subsanación*) that may be required for the purpose of or in connection with the powers granted in this Clause 20;

(vi) appear before any relevant authorities or registries for the purpose of executing, delivering, filing, registering, enforcing, recording or updating document, information, statement, payment, application or official forms (including those of a tax nature) that the Security Agent deems desirable or necessary in connection with the Transaction Security Documents;

(vii) execute in the name of any of the Secured Parties (whether in its own capacity or as agent for other parties) any novation, amendment, ratification, formalisation, acknowledgement, confirmation or cancellation of or to any Debt Document and appear before a Notary Public and raise any document into the status of a public document; and

(viii) upon enforcement in Spain of any security interests created by any Debtor under the Debt Documents, carry out any action which may be necessary for the enforcement of the Spanish Security (including the appointment of *procuradores* and appearance before the relevant courts).

(b) As an exception to the above, to the extent any Secured Party is unable to grant such powers referred to in paragraph (a) above or in any other provision of this Agreement to the Security Agent, each such Secured Party undertakes to:

(i) exercise in conjunction with the Security Agent and in the same act those powers which otherwise would have been conferred on the Security Agent; or

(ii) grant a notarial power of attorney duly notarised and apostilled or legalised (as the case may be) empowering the Security Agent (or its successor as a result of a change of Security Agent) to carry out any of the actions that may be required in Spain or any other jurisdiction as appropriate. Such power of attorney shall be granted at the request of the Security Agent.

(c) The relevant Secured Party will need to fully disclose its identity for the purpose of:

(i) granting the notarial power of attorney referred to in paragraph (b) above; and

(ii) if so requested by the Security Agent, granting any document (public or private) in Spain necessary for accepting, confirming, completing or enforcing any Spanish Security Documents agreed upon in accordance with the Debt Documents.

(d) The Security Agent shall be entitled to accept any Spanish Security Document in the name and on behalf of the Secured Parties by virtue of the powers granted in this Clause 20.

In furtherance of this Clause 20, each of the Secured Parties hereby undertakes to the Security Agent that, promptly upon request, such Secured Parties will ratify and confirm all transactions entered into and other actions by the Security Agent (or any of its substitutes or delegates) in the proper exercise of the power granted to it hereunder.

21 NOTE TRUSTEE PROTECTIONS

21.1 Limitation of Note Trustee Liability

It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by each Note Trustee not individually or personally but solely in its capacity as a Note Trustee in the exercise of the powers and authority conferred and vested in it under the relevant Debt Documents. It is further understood by the Parties that in no case shall a Note Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by it in good faith in accordance with this Agreement and in a manner that the relevant Note Trustee believed to be within the scope of the authority conferred on the Note Trustee by this Agreement and the relevant Debt Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, provided however, that a Note Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged that a Note Trustee shall not have any responsibility for the actions of any individual Noteholder.

21.2 Note Trustee not fiduciary for other Creditors

The Note Trustee shall not be deemed to owe any fiduciary duty to any of the Creditors (other than the Noteholders for which it is the Creditor Representative), any of the Subordinated Creditors or any member of the Group and shall not be liable to any Creditor (other than the Noteholders for which it is the Creditor Representative) any Subordinated Creditor or any member of the Group if the Note Trustee shall in good faith mistakenly pay over or distribute to the Noteholders or to any other person cash, property or securities to which any Creditor (other than the Noteholders for which it is the Creditor Representative) shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors (other than the Noteholders for which it is the Creditor Representative) and any Subordinated Creditor, the Note Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the relevant Debt Documents (including this Agreement) and no implied covenants or obligations with respect to Creditors (other than the Noteholders for which it is the Creditor Representative) and any Subordinated Creditor shall be read into this Agreement against a Note Trustee.

21.3 Reliance on certificates

A Note Trustee may rely without enquiry on any notice, consent or certificate of the Security Agent or any other Creditor Representative or any Hedge Counterparty as to the matters certified therein.

21.4 Note Trustee

In acting under and in accordance with this Agreement a Note Trustee shall act in accordance with the relevant Note Indenture and shall seek any necessary instruction from the relevant Noteholders, to the extent provided for, and in accordance with, the relevant Note Indenture, and where it so acts on the instructions of the Noteholders, the Note Trustee shall not incur any liability to any person for so acting other than in accordance with the Note Indenture. Furthermore, prior to taking any action under this Agreement or the relevant Debt Documents, as the case may be, the Note Trustee may reasonably request and rely upon an opinion of counsel or opinion of another qualified expert, at the Parent's expense, as applicable; provided, however, that any such opinions shall be at the expense of the relevant Noteholders, if such actions are on the instructions of the relevant Noteholders.

21.5 Turnover obligations

Notwithstanding any provision in this Agreement to the contrary, a Note Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a "**Turnover Receipt**") and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the Noteholders for which it is the Creditor Representative in accordance with the provisions of the relevant Note Indenture. For the purpose of this Clause 21.5, (i) "actual knowledge" of the Note Trustee shall be construed to mean the Note Trustee shall not be charged with knowledge (actual or

otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Note Trustee has received, not less than two Business Days' prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) "responsible officer" when used in relation to the Note Trustee means any person who is an officer within the corporate trust and agency department of the Note Trustee, including any director, associate director, vice president, assistance vice president, senior associate, assistant treasurer, trust officer, or any other officer of the Note Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

21.6 Creditors and the Note Trustee

In acting pursuant to this Agreement and the relevant Note Indenture, the Note Trustee is not required to have any regard to the interests of the Creditors (other than the Noteholders for which it is the Creditor Representative Creditors) or any Subordinated Creditor.

21.7 Note Trustee; reliance and information

(a) The Note Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.

(b) Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Primary Creditor (other than the Noteholders for which it is the Creditor Representative) confirms that it has not relied exclusively on any information provided to it by a Note Trustee in connection with any Debt Document. A Note Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.

(c) A Note Trustee is entitled to assume that:

(i) any payment or other distribution made in respect of the Liabilities, respectively, has been made in accordance with the provisions of this Agreement;

(ii) any Security granted in respect of the Liabilities is in accordance with Clause 4.2 (*Security: Senior Secured Creditors*);

(iii) no Default has occurred; and

(iv) no Discharge Date has occurred,

unless it has actual notice to the contrary. A Note Trustee is not obliged to monitor or enquire whether any such default has occurred.

21.8 No action

A Note Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified or secured to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors or the Noteholders for which it is the Creditor Representative, as applicable, in accordance with the terms of the relevant Note Indenture. A Note Trustee is not required to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

21.9 Departmentalisation

In acting as a Note Trustee, a Note Trustee shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by a Note Trustee which is

received or acquired by some other division or department or otherwise than in its capacity as Note Trustee may be treated as confidential by that Note Trustee and will not be treated as information possessed by that Note Trustee in its capacity as such.

21.10 Other parties not affected

This Clause 21 is intended to afford protection to each Note Trustee only and no provision of this Clause 21 shall alter or change the rights and obligations as between the other parties in respect of each other.

21.11 Security Agent and the Note Trustees

(a) A Note Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.

(b) A Note Trustee shall be under no obligation to instruct or direct the Security Agent to take any Security enforcement action unless it shall have been instructed to do so by the Noteholders for which it is the Creditor Representative and indemnified and/or secured to its satisfaction.

(c) The Security Agent acknowledges and agrees that it has no claims for any fees, costs or expenses from, or indemnification against, a Note Trustee.

21.12 Provision of information

A Note Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. A Note Trustee is not responsible for:

(a) providing any Creditor with any credit or other information concerning the risks arising under or in connection with the Transaction Security Documents or Debt Documents (including any information relating to the financial condition or affairs of any Debtor or their related entities or the nature or extent of recourse against any party or its assets) whether coming into its possession before, on or after the date of this Agreement; or

(b) obtaining any certificate or other document from any Creditor.

21.13 Disclosure of information

Each Debtor irrevocably authorises a Note Trustee to disclose to any other Debtor any information that is received by that Note Trustee in its capacity as Note Trustee.

21.14 Illegality

A Note Trustee may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

21.15 Resignation of Note Trustee

A Note Trustee may resign or be removed in accordance with the terms of the relevant Note Indenture, provided that a replacement of such Note Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of a Creditor/Creditor Representative Accession Undertaking.

21.16 Agents

A Note Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with reasonable care by it hereunder.

21.17 No Requirement for Bond or Security

A Note Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

21.18 Provisions Survive Termination

The provisions of this Clause 20.31 shall survive any termination of discharge of this Agreement.

22 CHANGES TO THE PARTIES

22.1 Assignments and transfers

No Party may:

(a) assign any of its rights; or

(b) transfer any of its rights and obligations,

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 22.

22.2 New Subordinated Creditor

A person shall become a Subordinated Creditor if it accedes to this Agreement as a Subordinated Creditor pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

22.3 Change of Subordinated Creditor

Subject to Clause 8.4 (*No acquisition of Subordinated Liabilities*), a Subordinated Creditor may:

(a) assign any of its rights; or

(b) transfer any of its rights and obligations,

in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as a Subordinated Creditor) acceded to this Agreement, as a Subordinated Creditor, pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

22.4 Change of Lender

(a) A Lender under an existing Facility may:

(i) assign any of its rights; or

(ii) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

(A) that assignment or transfer is in accordance with the terms of the relevant Facility Agreement to which it is a party; and

(B) subject to paragraph (b) below, any assignee or transferee has (if not already a Party as a Senior Secured Lender or Super Senior Lender, as applicable) acceded to this Agreement, as a Senior

Secured Lender or Super Senior Lender, as applicable, pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

(b) Paragraph (a)(ii)(B) above shall not apply in respect of:

(i) any debt buy-back permitted to be undertaken by a Debtor under the relevant Facility Agreement; and

(ii) any Liabilities Acquisition of the Senior Secured Debt Liabilities or Super Senior Liabilities by a member of the Group permitted under the relevant Facility Agreement and pursuant to which the relevant Liabilities are discharged,

effected in accordance with the terms of the Debt Documents.

22.5 Change of Noteholder

Any Noteholder may assign, transfer or novate any of its rights and obligations to any person without the need for such person to execute and deliver to the Security Agent a Creditor / Creditor Representative Accession Undertaking.

22.6 Change of Hedge Counterparty

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty) acceded to this Agreement pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*) as a Hedge Counterparty.

22.7 Change of Creditor Representative

No person shall become a Creditor Representative unless at the same time, it accedes to this Agreement as a Creditor Representative pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

22.8 Change of Intra-Group Lender

Subject to Clause 7.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

(a) assign any of its rights; or

(b) transfer any of its rights and obligations,

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

22.9 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any member of the Group, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*) provided that none of Globe Argentina Holdco, Ferroatlantica I+D S.L., Silicon Smelters, Ltd, Silico Ferrosolar S.L. and Globe Metales S.A. shall be required to accede to this Agreement as an Intra-Group Lender before the date falling seven (7) Business Days after the date of this Agreement.

22.10 Accession of Senior Secured Creditors under new Senior Secured Notes or Senior Secured Facilities

(a) In order for indebtedness in respect of any issuance of high yield notes, exchange notes or other debt securities to constitute "Senior Secured Liabilities" for the purposes of this Agreement:

(i) the Parent shall designate that issuance of debt securities as Senior Secured Notes and confirm in writing to the Primary Creditors that the incurrence of those debt securities as Senior Secured Liabilities under this Agreement will not breach the terms of any of its existing Senior Secured Debt Documents or Super Senior Debt Documents; and

(ii) the trustee or agent in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to those Senior Secured Liabilities pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

(b) In order for indebtedness under any credit facility to constitute "Senior Secured Liabilities" for the purposes of this Agreement:

(i) the Parent shall designate that credit facility as a Senior Secured Facility and confirm in writing to the Primary Creditors that the establishment of that Senior Secured Facility as Senior Secured Liabilities under this Agreement will not breach the terms of any of its existing Senior Secured Debt Documents or Super Senior Debt Documents;

(ii) each creditor in respect of that credit facility shall accede to this Agreement as a Senior Secured Lender;

(iii) each arranger in respect of that credit facility shall accede to this Agreement as an Arranger; and

(iv) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit facility pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

22.11 Accession of Super Senior Creditors under new Super Senior Notes or Super Senior Facilities

(a) In order for indebtedness in respect of any issuance of high yield notes, exchange notes or other debt securities to constitute "Super Senior Liabilities" for the purposes of this Agreement:

(i) the Parent shall designate that issuance of debt securities as Super Senior Notes and confirm in writing to the Primary Creditors that the incurrence of those debt securities as Super Senior Liabilities under this Agreement will not breach the terms of any of its existing Senior Secured Debt Documents or Super Senior Debt Documents; and

(ii) the trustee or agent in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to those Super Senior Liabilities pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

(b) In order for indebtedness under any credit facility to constitute "Super Senior Liabilities" for the purposes of this Agreement:

(i) the Parent shall designate that credit facility as a Super Senior Facility and confirm in writing to the Primary Creditors that the establishment of that Super Senior Facility as Super Senior Liabilities under this Agreement will not breach the terms of any of its existing Senior Secured Debt Documents or Super Senior Debt Documents;

(ii) each creditor in respect of that credit facility shall accede to this Agreement as a Super Senior Lender;

(iii) each arranger in respect of that credit facility shall accede to this Agreement as an Arranger; and

(iv) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit facility pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*).

22.12 New Ancillary Lender

If any Affiliate of a Lender becomes an Ancillary Lender in accordance with the relevant Facility Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already a Party as a Senior Secured Lender or Super Senior Lender (as applicable)) acceded to this Agreement in that capacity pursuant to Clause 22.13 (*Creditor/Creditor Representative Accession Undertaking*) and, to the extent required by the relevant Facility Agreement, to that Facility Agreement as an Ancillary Lender.

22.13 Creditor/Creditor Representative Accession Undertaking

With effect from the date of acceptance by the Security Agent of a Creditor/Creditor Representative Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Creditor Representative Accession Undertaking:

(a) any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and

(b) as from that date, the replacement or new Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor/Creditor Representative Accession Undertaking; and

(c) to the extent envisaged by the relevant Facility Agreement, any new Ancillary Lender (which is an Affiliate of a Lender) shall also become party to the relevant Facility Agreement as an "Ancillary Lender" and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the Facility Agreement as an Ancillary Lender.

22.14 New Debtor

(a) If any member of the Group:

(i) incurs any Liabilities; or

(ii) gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities,

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with paragraph (c) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance.

(b) If any Affiliate of a Borrower becomes a borrower of an Ancillary Facility in accordance with the relevant Facility Agreement, the relevant Borrower shall procure that such Affiliate accedes to this Agreement as a Debtor no later than contemporaneously with the date on which it becomes a borrower.

(c) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.

22.15 Additional parties

(a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.

(b) In the case of a Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Lender):

(i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Creditor Representative Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Creditor Representative Accession Undertaking to the relevant Creditor Representative; and

(ii) the relevant Creditor Representative shall, as soon as practicable after receipt by it, sign and accept that Creditor/Creditor Representative Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

22.16 Resignation of a Debtor

(a) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.

(b) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;

(ii) to the extent that the Senior Secured Debt Discharge Date has not occurred, each relevant Creditor Representative notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, an issuer or a guarantor of the Senior Secured Liabilities for which it is the Creditor Representative;

(iii) to the extent that the Super Senior Debt Discharge Date has not occurred, each relevant Creditor Representative notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, an issuer or a guarantor of the Super Senior Liabilities for which it is the Creditor Representative;

(iv) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities; and

(v) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Subordinated Liabilities.

(c) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

23 COSTS AND EXPENSES

23.1 Transaction expenses

The Parent (or any other Debtor) shall, within five (5) Business Days of demand, pay, or procure payment, to the Security Agent the amount of all reasonable costs and expenses (including legal fees, notarial fees and registration costs) (including VAT where applicable) properly incurred by the Security Agent and by any Receiver or Delegate (evidence of which shall be provided to the Parent) in connection with the negotiation, preparation, printing, execution and perfection of:

(a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

(b) any other Debt Documents executed after the date of this Agreement.

23.2 Amendment costs

If the Parent or any other Debtor requests an amendment, waiver or consent, the Parent shall, within five (5) Business Days of demand, reimburse or procurement the reimbursement of the Security Agent for the amount of all reasonable third party costs and expenses (including legal fees, notarial fees and registration costs) (including VAT where applicable) properly incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

23.3 Enforcement and preservation costs

The Parent (or any other Debtor) shall, within three Business Days of demand, pay, or procure payment, to the Security Agent the amount of all costs and expenses (including legal fees, notarial fees, registration costs and the costs of any Spanish court clerk (*procurador de los tribunales*) even if their intervention is not mandatory and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Debt Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

23.4 Stamp taxes

The Parent (or any other Debtor) shall pay and, within five (5) Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document except to the extent that such stamp duty, registration or other similar Tax becomes payable upon a voluntary registration made by the Security Agent if such registration is not necessary to evidence, prove, maintain, enforce, compel or otherwise assert the rights of such Party.

23.5 Interest on demand

Without duplication of any default interest payable under any Debt Document, if any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall (to the extent such accrual does not result in any double counting under the provisions of this Agreement and the provisions of the other Debt Documents) accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is one (1) per cent. per annum over the rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select provided that if any such rate is below zero, that rate will be deemed to be zero.

24 OTHER INDEMNITIES

24.1 Indemnity to the Security Agent

(a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any fee, cost, claim, loss, tax or liability (together with any applicable VAT) incurred by any of them as a result of:

(i) any failure by the Parent to comply with its obligations under Clause 23 (*Costs and Expenses*);

(ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

(iii) the taking, holding, protection or enforcement of the Transaction Security;

(iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;

(v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;

(vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or

(vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

(b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 24.1 will not be prejudiced by any release or disposal under Clause 15 (*Distressed Disposals*) taking into account the operation of that Clause 15.

(c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 24.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

24.2 Parent's indemnity to Primary Creditors

The Parent shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 15 (*Distressed Disposals*).

24.3 Survival of certain provisions

Clause 20.13 (*Primary Creditors' indemnity to the Security Agent*), Clause 23 (*Costs and Expenses*) and Clause 24.1 (*Indemnity to the Security Agent*) shall survive any termination or discharge of this Agreement and the resignation, or termination of the appointment, of the Security Agent.

25 INFORMATION

25.1 Dealings with Security Agent and Creditor Representatives

(a) Subject to the provisions of any Facility Agreement relating to "Communication when Agent is Impaired Agent", each Senior Secured Noteholder, Senior Secured Lender, Super Senior Noteholder and Super Senior Lender shall deal with the Security Agent exclusively through its Creditor Representative and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any Creditor Representative.

(b) No Creditor Representative shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

25.2 Disclosure between Primary Creditors and Security Agent

Notwithstanding any agreement to the contrary, each of the Debtors and Subordinated Creditors consents, until the Final Discharge Date, to the disclosure by any Primary Creditor and the Security Agent to each other (whether or not through a Creditor Representative or the Security Agent) of such information concerning the Debtors and the Subordinated Creditors as any Primary Creditor or the Security Agent shall see fit.

25.3 Notification of prescribed events

(a) If an Event of Default or Default under a Senior Secured Debt Document or Super Senior Debt Document either occurs or ceases to be continuing the relevant Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Primary Creditor.

(b) If an Acceleration Event occurs, the relevant Creditor Representative(s) shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.

(c) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.

(d) If any Primary Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.

(e) If the Security Agent receives a Super Senior Enforcement Notice it shall, upon receiving that notice, notify, and send a copy of that notice to, each Creditor Representative.

(f) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Creditor Representatives and each other Hedge Counterparty.

(g) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.

26 NOTICES

26.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

26.2 Security Agent's communications with Primary Creditors

(a) The Security Agent shall be entitled to carry out all dealings with the Noteholders and Lenders through their respective Creditor Representatives and may give to the Creditor Representatives, as applicable, any notice, document or other communication required to be given by the Security Agent to a Lender or a Noteholder; and

(b) with each Hedge Counterparty directly with that Hedge Counterparty.

26.3 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

(a) in the case of the Parent or the Company, that identified with its name below;

(b) in the case of the Security Agent, that identified with its name below; and

(c) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

26.4 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 26.3 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

(c) Any communication or document made or delivered to the Parent in accordance with this Clause 26.4 will be deemed to have been made or delivered to each of the Debtors.

(d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

26.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 26.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

26.6 Electronic communication

(a) Any communication or document to be made or delivered by one Party to another under or in connection with this Agreement may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:

(i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

(ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

(b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between a Subordinated Creditor, a Debtor or an Intra-Group Lender and the Security Agent or a Primary Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.

(c) Any such electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

(d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

(e) Any reference in this Agreement to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 26.6.

26.7 English language

(a) Any notice given under or in connection with this Agreement must be in English.

(b) All other documents provided under or in connection with this Agreement must be:

(i) in English; or

(ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

27 PRESERVATION

27.1 Partial invalidity

If, at any time, any provision of a Debt Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

27.2 No impairment

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

27.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

27.4 Waiver of defences

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 27.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

(a) any time, waiver or consent granted to, or composition with, any Debtor or other person;

(b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;

(e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;

(g) any intermediate Payment of any of the Liabilities owing to the Primary Creditors in whole or in part; or

(h) any insolvency or similar proceedings.

27.5 Priorities not affected

Except as otherwise provided in this Agreement the priorities referred to in Clause 2 (*Ranking and Priority*) will:

(a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Primary Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;

(b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and

(c) secure the Liabilities owing to the Primary Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

28 CONSENTS, AMENDMENTS AND OVERRIDE

28.1 Required consents

(a) Subject to paragraph (b) below and to Clause 28.4 (*Exceptions*):

(i) Clause 18.1 (*Equalisation Definitions*) to Clause 18.3 (*Equalisation*) may be amended or waived with the consent of the Creditor Representatives in respect of any Creditor Class and the Security Agent to the extent that that amendment or waiver does not affect any other Creditor Class;

(ii) Schedule 4 (*Hedge Counterparties' Guarantee and Indemnity*) may be amended or waived with the consent of each Hedge Counterparty to the extent that that amendment or waiver does not affect the Senior Secured Debt Creditors or the Super Senior Creditors; and

(iii) subject to paragraphs (i) to (ii) above, this Agreement may be amended or waived only with the consent of the Creditor Representatives, the Required Super Senior Creditors and the Required Senior Secured Creditors and the Security Agent.

(b) An amendment or waiver that has the effect of changing or which relates to:

(i) Clause 12 (*Redistribution*), Clause 13 (*Enforcement of Transaction Security*), Clause 17 (*Application of Proceeds*) or this Clause 28 (*Consents, Amendments and Override*);

(ii) paragraphs (d)(iii), (e) and (f) of Clause 20.4 (*Instructions*);

(iii) the order of priority or subordination under this Agreement,

shall not be made without the consent of:

(A) each of the Creditor Representatives acting in accordance with the provisions of the applicable Primary Financing Documents.

(B) each Hedge Counterparty (to the extent that the amendment or waiver would (i) materially adversely affect the rights and obligations of the Hedge Counterparties under this Agreement in their capacity as such, and (ii) would not materially adversely affect the rights and obligations of any Creditor or class of Creditors other than the Hedge Counterparties (solely in their capacity as such)); and

(C) the Security Agent.

28.2 Amendments and Waivers: Transaction Security Documents

(a) Subject to paragraphs (b) and (c) below and to Clause 28.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Required Super Senior Creditors and the Required Senior Secured Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.

(b) Subject to paragraph (c) of Clause 28.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:

(i) the nature or scope of the Charged Property;

(ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or

(iii) the release of any Transaction Security,

shall not be made without the prior consent of each of the Creditor Representatives acting in accordance with the provisions of the applicable Primary Financing Documents and the Hedge Counterparties.

(c) With respect to any Debtor whose registered office is located in France, any amendment or waiver of, or consent under, any Transaction Security Document which:

(i) has the effect of changing or which relates to the definition of "Secured Obligations" in the relevant Transaction Security Document, or

(ii) is or would constitute financial assistance within the meaning of in Article L.225-216 of the French Commercial Code (Code de commerce) or would constitute a misuse of corporate assets within the meaning of article L.241-3, L.242-6 or L.244-1 of the French Commercial Code (Code de commerce) or any other applicable law or regulations having the same effect, as interpreted by French courts,

no consent, amendment or granting shall be made or decided or agreed upon by the Parent without the prior express consent of the relevant member of the Group (other than the Parent) which is a Party to such Transaction Security Document.

28.3 Effectiveness

(a) Any amendment, waiver or consent given in accordance with this Clause 28 will be binding on all Parties and the Security Agent may effect, on behalf of any Primary Creditor, any amendment, waiver or consent permitted by this Clause 28.

(b) Without prejudice to the generality of Clause 20.9 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

28.4 Exceptions

(a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:

(i) in the case of a Primary Creditor (other than any Creditor Representative or any Arranger), in a way which affects or would affect Primary Creditors of that Party's class generally; or

(ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 28.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

(b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of a Creditor Representative, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of that Creditor Representative or, as the case may be, that Arranger, the Security Agent or that Hedge Counterparty.

(c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 28.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:

(i) to any release of Transaction Security, claim or Liabilities; or

(ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 14 (*Non-Distressed Disposals*) or Clause 15 (*Distressed Disposals*).

(d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Liabilities are then owed to that Arranger.

28.5 Disenfranchisement of Defaulting Lenders

(a) For so long as a Defaulting Lender has any Available Commitment:

(i) in ascertaining:

(A) the Required Super Senior Creditors or Majority Senior Secured Creditors; or

(B) whether:

(1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations or Senior Secured Credit Participations; or

(2) the agreement of any specified group of Primary Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender's Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender, a Senior Secured Creditor or a Super Senior Creditor.

(b) For the purposes of this Clause 28.5, the Security Agent may assume that the following Primary Creditors are Defaulting Lenders:

(i) any Lender which has notified the Security Agent that it has become a Defaulting Lender;

(ii) any Lender to the extent that the relevant Creditor Representative has notified the Security Agent that that Lender is a Defaulting Lender; and

(iii) any Lender in relation to which it is aware that any of the events or circumstances referred to in the definition of "Defaulting Lender" (or any substantially similar term) in the relevant Facility Agreement has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Security Agent) or the Security Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

28.6 Calculation of Super Senior Credit Participations and Senior Secured Credit Participations

For the purpose of ascertaining whether any relevant percentage of Senior Secured Credit Participations or Super Senior Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Senior Secured Credit Participations and/or Super Senior Creditor Participations into their Common Currency Amounts.

28.7 Deemed consent

If, at any time prior to the Final Discharge Date, any of the Primary Creditors (or the relevant Creditor Representative(s) on their behalf) give a Consent in respect of their respective Debt Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders and the Parent and the Subordinated Creditors will (or will be deemed to):

(a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and

(b) do anything (including executing any document) that the Primary Creditors may reasonably require to give effect to this Clause 28.7.

28.8 Excluded consents

Clause 28.7 (*Deemed consent*) does not apply to any Consent which has the effect of:

(a) increasing or decreasing the Liabilities;

(b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or

(c) changing the terms of this Agreement or of any Security Document.

28.9 No liability

None of the Primary Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 28.

28.10 Agreement to override

(a) Subject to paragraph (b) below, unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.

(b) Notwithstanding anything to the contrary in this Agreement, paragraph (a) above will not cure, postpone, waive or negate in any manner any default or event of default (however described) under any Debt Document as between any Creditor and any Debtor that are party to that Debt Document.

29 COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

30 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

31 ENFORCEMENT

31.1 Jurisdiction

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) Notwithstanding paragraph (a) above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

31.2 Service of process

(a) Without prejudice to any other mode of service allowed under any relevant law:

(i) each Debtor (unless incorporated in England and Wales):

(A) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement, accepts that appointment; and

(B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned; and

(ii) each Subordinated Creditor (unless incorporated in England and Wales):

(A) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

(B) agrees that failure by a process agent to notify the relevant Subordinated Creditor of the process will not invalidate the proceedings concerned.

(b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent or the relevant Subordinated Creditor must immediately (and in any event within five (5) days of such event taking place) appoint another agent on terms acceptable to each Creditor Representative and each Hedge Counterparty. Failing this, the relevant Creditor Representative or Hedge Counterparty (as the case may be) may appoint another agent for this purpose.

32 SPANISH FORMALITIES

(a) For the purpose of art. 571 *et seq*. of the Spanish Civil Procedure Act, the Parties agree that:

(i) the amount due and payable under the Debt Documents by any Debtor or security provider that may be claimed in any executive proceedings brought in Spain will be contained in a certificate setting out the relevant calculations and determinations provided by the Security Agent, the relevant Creditor Representative or a Secured Party and will be based on the accounts maintained by the Security Agent, the relevant Creditor Representative or Secured Party (as appropriate) in connection with the Debt Documents. For this purpose, the Security Agent may request (if appropriate) from each Creditor Representative or Secured Party, and each of them undertakes to provide to the Security Agent, a certificate issued by each of them reflecting the balance of the amounts due for payment under each Debt Document (as appropriate);

(ii) subject to the terms of this Agreement, the Security Agent, the relevant Creditor Representative and/or each Secured Party may (at the cost of the relevant Spanish Debtor) have the certificate notarized evidencing that the calculations and determinations have been effected; and

(iii) the amount of the balance so established shall be notified to the relevant Debtors.

Notwithstanding the above, for the purposes of art. 571 et seq. of the Spanish Civil Procedure Act, the Parties agree and the Debtors expressly recognize that the certificate issued by the Security Agent containing the total outstanding amount under the Debt Documents shall be sufficient and conclusive evidence of the total amounts due and payable

(*líquido, vencido y exigible*) from time to time and to take any Enforcement Action (including enforcement of any Spanish Security Document).

(b) The Debtors hereby expressly authorise the Security Agent (and each Secured Party, as appropriate) to request and obtain certificates and documents issued by the notary who has formalised this Agreement (or any accession deed or amendment thereto) in order to evidence its compliance with the entries of his registry-book and the relevant entry date for the purpose of numbers 4º or 5º (as applicable) of Article 517 of the Spanish Civil Procedure Act. The cost of such certificate and documents will be for the account of the Spanish Debtors in the manner provided under this Agreement.

(c) This Agreement, as well as any amendments and/or any accession deed or accession undertaking thereto shall be raised to public by means of a Spanish Public Document for the purposes contemplated in Article 517 et seq., of the Spanish Civil Procedure Act, Articles 913-4 and 914-2, in relation to Article 916-2 of the Spanish Commercial Code and other related provisions. The costs of notarisation of this Agreement and any Debt Document, as well as any amendments and/or any accession undertaking shall be borne by the Debtors.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Debtors and the Subordinated Creditors and is intended to be and is delivered by them as a deed on the date specified above.

SCHEDULE 1

FORM OF DEBTOR ACCESSION DEED

THIS AGREEMENT is made on [ ] and made between:

(1) [*Insert Full Name of New Debtor*] (the "**Acceding Debtor**"); and

(2) [*Insert Full Name of Current Security Agent*] (the "**Security Agent**"), for itself and each of the other parties to the intercreditor agreement referred to below.

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the "**Intercreditor Agreement**") dated [ ] between, amongst others, [ ] as parent, [ ] as company, [ ] as security agent, [ ] as [super senior note trustee], the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[*Insert details (date, parties and description) of relevant documents*]

the "**Relevant Documents**".

IT IS AGREED as follows:

1 Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.

2 The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:

(a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;

(b) all proceeds of that Security; and]*

(c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities (or under the Parallel Debt pursuant to Clause 19.3 (*Parallel Debt*)) to the Security Agent as trustee or agent for (or otherwise for the benefit of) the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee or agent for (or otherwise for the benefit of) the Secured Parties,

on trust for (or otherwise for the benefit of) the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

3 The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

4 [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].[1]

[4]/[5] This Agreement [and any non-contractual obligations arising out of or in connection with it are is governed by, English law.

[This Agreement will be formalised in a Spanish Public Document, so that it may have the status of a Spanish Public Document and for all purposes contemplated in Article 517, number 4 of the Spanish Civil Procedure Act][2]

THIS AGREEMENT has been signed on behalf of the Security Agent and executed as a deed by the Acceding Debtor and is delivered on the date stated above.

The Acceding Debtor

[**EXECUTED AS A DEED**)
By: [*Full Name of Acceding Debtor*])

_____ Director

_____ Director/Secretary

OR

[**EXECUTED AS A DEED**)
By: [*Full name of Acceding Debtor*])

_____ Signature of Director

_____ Name of Director

in the presence of

_____ Signature of witness

_____ Name of witness

Address of witness

Occupation of witness]

Address for notices:

Address:

Fax:

[1] Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

[2] Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is incorporated under the laws of Spain.

The Security Agent

[*Full Name of Current Security Agent*]

By:

Date:

SCHEDULE 2

FORM OF CREDITOR/CREDITOR REPRESENTATIVE ACCESSION UNDERTAKING

To: [*Insert full name of current Security Agent*] for itself and each of the other parties to the Intercreditor Agreement referred to below.

From: [*Acceding Creditor*]

THIS UNDERTAKING is made on [*date*] by [*insert full name of new Senior Secured Creditor/Super Senior Creditor/Hedge Counterparty/Creditor Representative/ Arranger/Intra-Group Lender/Subordinated Creditor*] (the "**Acceding Senior Secured Creditor/ Super Senior Creditor/Hedge Counterparty/Creditor Representative//Intra-Group Lender/Subordinated Creditor**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [ ] between, among others, [INSERT NAME OF PARENT] as parent, [INSERT NAME OF COMPANY] as company, [INSERT NAME OF SECURITY AGENT] as security agent, [INSERT NAME OF SUPER SENIOR NOTE TRUSTEE] as super senior note trustee, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Senior Secured Creditor/Super Senior Creditor/Hedge Counterparty/Creditor Representative/ Arranger/ Intra-Group Lender/Subordinated Creditor] being accepted as a [Senior Secured Creditor/Super Senior Creditor/Hedge Counterparty/

Creditor Representative/Arranger/Intra-Group Lender/Subordinated Creditor] for the purposes of the Intercreditor Agreement, the Acceding [Senior Secured Creditor/Super Senior Creditor/Hedge Counterparty/Creditor Representative/ Arranger/Intra-Group Lender/ Subordinated Creditor] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Senior Secured Creditor/ Super Senior Creditor/Hedge Counterparty/Creditor Representative/Arranger/Intra-Group Lender/Subordinated Creditor] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Senior Secured Creditor/Super Senior Creditor/Hedge Counterparty/Creditor Representative/Arranger/Intra-Group Lender/Subordinated Creditor] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[The Acceding Lender is an Affiliate of a Lender and has become a provider of an Ancillary Facility. In consideration of the Acceding Lender being accepted as an Ancillary Lender for the purposes of the relevant Facility Agreement, the Acceding Lender confirms, for the benefit of the parties to the Facility Agreement, that, as from [date], it intends to be party to the Facility Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Facility Agreement to be assumed by a Finance Party (as defined in the Facility Agreement) and agrees that it shall be bound by all the provisions of the Facility Agreement, as if it had been an original party to the Facility Agreement as an Ancillary Lender.][3]

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

THIS UNDERTAKING has been entered into on the date stated above and is executed as a deed by the Acceding Creditor, if it is acceding as an Intra-Group Lender or a Subordinated Creditor and is delivered on the date stated above.

Acceding [Creditor]

[**EXECUTED** as a **DEED**]
[*insert full name of Acceding Creditor*]

[3] Include only in the case of an Ancillary Lender which is an Affiliate of a Credit Facility Lender which is using this undertaking to accede to the relevant Credit Facility Agreement in accordance with paragraph (c) of Clause 22.13 (Creditor/Creditor Representative Accession Undertaking)

By:

Address:

Fax:

Accepted by the Security Agent	[Accepted by the relevant Creditor Representative]
for and on behalf of	for and on behalf of
[*Insert full name of current Security Agent*]	[*Insert full name of relevant Creditor Representative*]
Date:	Date:][4]

[4] Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Credit Facility Lender which is using this undertaking to accede to the relevant Credit Facility Agreement.

SCHEDULE 3
FORM OF DEBTOR RESIGNATION REQUEST

To: [ ] as Security Agent

From: [resigning Debtor] and [Parent]

Dated:

Dear Sirs

[Parent] - [ ] Intercreditor Agreement
dated [ ] (the "Intercreditor Agreement")

1 We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.

2 Pursuant to Clause 22.16 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.

3 We confirm that:

(a) no Default is continuing or would result from the acceptance of this request; and

(b) [resigning Debtor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Subordinated Liabilities.

4 This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]	[resigning Debtor]
By:	By:

SCHEDULE 4
HEDGE COUNTERPARTIES' GUARANTEE AND INDEMNITY

1 Guarantee

Each Debtor irrevocably and unconditionally jointly and severally:

(a) guarantees to each Hedge Counterparty punctual performance by each other Debtor of all that Debtor's obligations under the Hedging Agreements;

(b) undertakes with each Hedge Counterparty that whenever another Debtor does not pay any amount when due under or in connection with any Hedging Agreement, that Debtor shall immediately on demand pay that amount as if it was the principal Debtor; and

(c) agrees with each Hedge Counterparty that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Hedge Counterparty immediately on demand against any cost, loss or liability it incurs as a result of a Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Hedging Agreement on the date when it

would have been due. The amount payable by a Debtor under this indemnity will not exceed the amount it would have had to pay under this Schedule 4 if the amount claimed had been recoverable on the basis of a guarantee.

2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Debtor under the Hedging Agreements, regardless of any intermediate payment or discharge in whole or in part.

3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is made by a Hedge Counterparty in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Debtor under this Schedule 4 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

4 Waiver of defences

The obligations of each Debtor under this Schedule 4 will not be affected by an act, omission, matter or thing which, but for this Schedule 4, would reduce, release or prejudice any of its obligations under this Schedule 4 (without limitation and whether or not known to it or any Hedge Counterparty) including:

(a) any time, waiver or consent granted to, or composition with, any Debtor or other person;

(b) the release of any other Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Debtor or any other person;

(e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Hedging Agreement or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any hedging arrangements or the addition of any new hedging arrangements under any Hedging Agreement or other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Hedging Agreement or any other document or security; or

(g) any insolvency or similar proceedings.

5 Debtor intent

Without prejudice to the generality of paragraph 4 (*Waiver of defences*), each Debtor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Hedging Agreements and/or any hedging made available for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

6 Immediate recourse

Each Debtor waives any right it may have of first requiring any Hedge Counterparty (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Debtor under this Schedule 4. This waiver applies irrespective of any law or any provision of a Hedging Agreement to the contrary.

7 Appropriations

Until all amounts which may be or become payable by the Debtors under or in connection with the Hedging Agreements have been irrevocably paid in full, each Hedge Counterparty (or any trustee or agent on its behalf) may:

(a) refrain from applying or enforcing any other moneys, security or rights held or received by that Hedge Counterparty (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Debtor shall be entitled to the benefit of the same; and

(b) hold in an interest-bearing suspense account any moneys received from any Debtor or on account of any Debtor's liability under this Schedule 4.

8 Deferral of Debtors' rights

Until all amounts which may be or become payable by the Debtors under or in connection with the Hedging Agreements have been irrevocably paid in full, no Debtor will exercise any rights which it may have by reason of performance by it of its obligations under the Hedging Agreements or by reason of any amount being payable, or liability arising, under this Schedule 4:

(a) to be indemnified by a Debtor;

(b) to claim any contribution from any other guarantor of any Debtor's obligations under the Hedging Agreements;

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparties under the Hedging Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Hedging Agreements by any Hedge Counterparty;

(d) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Debtor has given a guarantee, undertaking or indemnity under paragraph 1 (*Guarantee*);

(e) to exercise any right of set-off against any Debtor; and/or

(f) to claim or prove as a creditor of any Debtor in competition with any Hedge Counterparty.

If a Debtor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Hedge Counterparties by the Debtors under or in connection with the Hedging Agreements to be repaid in full on trust (or, if it is impossible under the laws of the jurisdiction of incorporation of that Debtor to hold the same on trust, then as agent under an obligation to pay) for the Hedge Counterparties and shall promptly pay or transfer the same to the Relevant Hedge Counterparty.

9 Release of Debtors' right of contribution

If any Debtor (a "**Retiring Debtor**") ceases to be a Debtor in accordance with the terms of the Hedging Agreements for the purpose of any sale or other disposal of that Retiring Debtor then on the date such Retiring Debtor ceases to be a Debtor:

(a) that Retiring Debtor is released by each other Debtor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Debtor arising by reason of the performance by any other Debtor of its obligations under the Hedging Agreements; and

(b) each other Debtor waives any rights it may have by reason of the performance of its obligations under the Hedging Agreements to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparties under any Hedging Agreement or of any other security taken pursuant to, or in connection with, any Hedging Agreement where such rights or security are granted by or in relation to the assets of the Retiring Debtor.

10 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Hedge Counterparty.

11 French Guarantee Limitations

(a) In the case of each Debtor incorporated in France (a "**French Hedging Guarantor**"), this guarantee and the obligations and liabilities of each French Hedging Guarantor under and in connection with the Hedging Agreements (including, without limitation, this Schedule 4 (*Hedge Counterparties' Guarantee and Indemnity*)) shall apply only insofar as required to:

(i) guarantee the payment obligations under the Hedging Agreements of its direct or indirect Restricted Subsidiaries which are or become Hedging Debtors from time to time under the Hedging Agreements and incurred by those Restricted Subsidiaries as Hedging Debtors only; and

(ii) guarantee the payment obligations under the Hedging Agreements of any other Hedging Debtor which is not a direct or indirect Restricted Subsidiary of that French Hedging Guarantor, provided that in such case such guarantee shall be limited to an amount equal to: (A) the payment obligations of such Hedging Debtor but (B) not exceeding an amount equal to the aggregate of all amounts borrowed directly (as Borrower) or indirectly (by way of intra-group loans or advances directly or indirectly from any other Borrower) by such Hedging Debtor under the Facility Agreement and/or the Hedging Agreements and on-lent by such Hedging Debtor directly or indirectly to that French Hedging Guarantor or its Subsidiaries and outstanding on the date on which the guarantee is enforced against that French Hedging Guarantor (the "**Maximum Guaranteed Amount**"); it being specified that any payment made by such French Hedging Guarantor under this Schedule 4 (*Hedge Counterparties' Guarantee and Indemnity*) in respect of the obligations of any other Hedging Debtor shall reduce *pro tanto* the outstanding amount of the intra-group loans or advances (if any) due by such French Hedging Guarantor to that Hedging Debtor under the intra-group loans or advances referred to above.

(b) For the avoidance of doubt, any payment made by a French Hedging Guarantor under paragraph (a)(ii) above shall reduce the Maximum Guaranteed Amount.

(c) Notwithstanding any other provision of this Schedule 4(*Hedge Counterparties' Guarantee and Indemnity*), no French Hedging Guarantor shall guarantee or secure liabilities under the Hedging Agreements which would result in such French Hedging Guarantor not complying with French financial assistance rules as set out in Article L. 225-216 of the French Commercial Code (*Code de commerce*) and/or would constitute a misuse of corporate assets and/or abuse of power within the meaning of article L. 241-3 or L. 242-6 of the French Commercial Code (*Code de commerce*) or any other law or regulations having the same effect, as interpreted by French courts.

It is acknowledged that each French Hedging Guarantor is not acting jointly and severally with the other Guarantors and shall not be considered as "*codébiteur solidaire*" as to their obligations pursuant to the guarantee given in accordance with this Schedule 4 (*Hedge Counterparties' Guarantee and Indemnity*).

12 Norwegian Guarantee limitations

Notwithstanding the other provisions of this Schedule 4, the obligations and liabilities of any Debtor incorporated in Norway (each, a "**Norwegian Debtor**") under this Schedule 4 shall be deemed to have been given only to the extent such obligations and liabilities do not violate the mandatory provisions of the Norwegian Private Limited Companies Act of 13 June 1997 no. 44 (the "**Norwegian Companies Act**"), including Sections 8-7 and 8-10, regulating unlawful financial assistance and other prohibited loans, guarantees and joint and several liability as well as providing of security, and the liability of each Norwegian Debtor shall only apply to the fullest extent permitted by such provisions of the Norwegian Companies Act. The liabilities of any Norwegian Debtor is limited to the maximum principal amount of $500,000,000 plus any unpaid amounts of interest, default interest, breaking costs, fees, commissions, costs, expenses and other derived liabilities under this Schedule 4. The limitations in this paragraph 12 shall apply mutatis mutandis to any Security Document to which a Norwegian Guarantor is party.

13 Spanish Guarantee limitations

In the case of each Debtor incorporated in Spain (a "**Spanish Hedging Guarantor**"), this guarantee and the obligations and liabilities of each Spanish Hedging Guarantor under and in connection with the Hedging Agreements (including, without limitation, this Schedule 4) shall (i) not include any obligations or liabilities which, if incurred, would constitute a breach of the financial assistance limitations set out under Articles 143 and 150 of Spanish Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Spanish Capital Companies Act, as interpreted by Spanish courts, and (ii) with respect to Spanish Guarantors which are private limited liability companies (*sociedad limitada*), not exceed an amount equal to twice the amount of their respective own funds (*recursos propios*), but only to the extent that such limitation provided under Article 401.2 of the Spanish Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Spanish Capital Companies Act, as interpreted by Spanish courts, is compulsorily applicable to the obligations assumed by such Spanish Guarantors under this Indenture.

14 Additional Debtor limitations

The guarantee of any Additional Debtor is subject to any limitations relating to that Additional Debtor set out in any relevant Debtor Accession Deed.

SIGNATURES

The Debtors

The Parent

Executed as a deed by
FERROGLOBE PLC
acting by

MARCO LEVI
(PRINT NAME)

/s/ Marco Levi
Director

in the presence of:

Name: LUCIA BLASCO CUE
(BLOCK CAPITALS)

/s/ Lucía Blasco Cué
(SIGNATURE OF WITNESS)

Address: P. CASELLANA 259 D
28046 MADRID
SPAIN

Occupation: LAWYER

[SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT]

Other Original Debtors

Executed as a deed by
FERROGLOBE FINANCE COMPANY, PLC
acting by

MARCO LEVI
(PRINT NAME)

/s/ Marco Levi
Director

in the presence of:

Name: LUCIA BLASCO CUE
(BLOCK CAPITALS)

/s/ Lucía Blasco Cué
(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D
28046 MADRID
SPAIN

Occupation: LAWYER

[SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT]

Executed as a deed by
FERROGLOBE PLC
acting by

MARCO LEVI
(PRINT NAME)

/s/ Marco Levi
Director

in the presence of:

Name: LUCIA BLASCO CUE
(BLOCK CAPITALS)

/s/ Lucía Blasco Cué
(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D
28046 MADRID
SPAIN

Occupation:LAWYER

[SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT]

Executed as a deed by

FERROGLOBE HOLDING COMPANY, LTD

acting by

BEATRIZ GARCIA-COS MONTANCIA MUNTANOLA /s/ Beatriz García-Cos Muntañola

(PRINT NAME) Director

in the presence of:

Name: LUCIA BLASCO CUE /s/ Lucía Blasco Cué

(BLOCK CAPITALS) *(SIGNATURE OF WITNESS)*

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **GRUPO FERROATLANTICA, S.A.U.,** a limited liability company (*sociedad anónima unipersonal*), pursuant to a power of attorney dated 28 April 2021 /s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE — /s/ Lucía Blasco Cué

(BLOCK CAPITALS) — *(SIGNATURE OF WITNESS)*

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROATLANTICA PARTICIPACIONES, S.L.U.,** a limited liability company (*sociedad anónima unipersonal*), pursuant to a power of attorney dated 28 April 2021 — /s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE — /s/ Lucía Blasco Cué

(BLOCK CAPITALS) — *(SIGNATURE OF WITNESS)*

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

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Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROSOLAR OPCO GROUP, S.L.,** a limited liability company (*sociedad limitada*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **GRUPO FERROATLANTICA DE SERVICIOS, S.L.U.**, a limited liability company (*sociedad limitada unipersonal*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROATLANTICA DE BOO, S.L.U.,** a limited liability company (*sociedad limitada unipersonal), pursuant to a power of attorney dated 28 April 2021*

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROATLANTICA DE SABON, S.L.U.**, a limited liability company (*sociedad limitada unipersonal*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 D MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROATLANTICA DEL CINCA, S.L.**, a limited liability company (*sociedad limitada*), pursuant to a power of attorney dated 29 April 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

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Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **CUARZOS INDUSTRIALES, S.A.**, a limited liability company (s*ociedad anónima*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY-IN-FACT)

as attorney for **GSM NETHERLANDS, B.V.**, a limited liability company (*besloten vennootschap*) pursuant to a power of attorney dated 7 May 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY-IN-FACT)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

Executed as a deed by

THOMAS WIESNER
(PRINT NAME OF ATTORNEY)

as attorney for **FERROGLOBE MANGAN NORGE AS**, a limited liability company (*aksjeselskap*), pursuant to a power of attorney dated 7 May 2021

/s/ Thomas Wiesner
(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE
(BLOCK CAPITALS)

/s/ Lucía Blasco Cué
(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

Executed as a deed by

THOMAS WIESNER
(PRINT NAME OF ATTORNEY)

as attorney for **FERROPEM, S.A.S.**, a limited liability company (*société par actions simplifiée*), pursuant to a power of attorney dated 11 May 2021

/s/ Thomas Wiesner
(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE
(BLOCK CAPITALS)

/s/ Lucía Blasco Cué
(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by

THOMAS WIESNER
(PRINT NAME OF ATTORNEY)

as attorney for **FERROGLOBE MANGANESE FRANCE S.A.S.**, a limited liability company (*société par actions simplifiée*), pursuant to a power of attorney dated 11 May 2021

/s/ Thomas Wiesner
(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE
(BLOCK CAPITALS)

/s/ Lucía Blasco Cué
(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GLOBE METALLURGICAL INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico
(PRINT NAME))

/s/ Brian D' Amico
(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **ALDEN RESOURCES LLC**, a Delaware limited liability company, acting by

Brian D' Amico
(PRINT NAME))

/s/ Brian D' Amico
(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **ARL RESOURCES, LLC**, a Delaware limited liability company, acting by

Brian D' Amico
(PRINT NAME))

/s/ Brian D' Amico
(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **ARL SERVICES, LLC**, a Delaware limited liability company, acting by

Brian D' Amico
(PRINT NAME))

/s/ Brian D' Amico
(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **ALDEN SALES CORP, LLC**, a Delaware limited liability company, acting by

Brian D' Amico
(PRINT NAME))

/s/ Brian D' Amico
(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **CORE METALS GROUP HOLDINGS LLC**, a Delaware limited liability company, acting by

Brian D' Amico
(PRINT NAME))

/s/ Brian D' Amico
(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **CORE METALS GROUP LLC**, a Delaware limited liability company, acting by

Brian D' Amico
(PRINT NAME))

/s/ Brian D' Amico
(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **METALLURGICAL PROCESS MATERIALS, LLC**, a Delaware limited liability company, acting by

Brian D' Amico

/s/ Brian D' Amico

(PRINT NAME))

(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **TENNESSEE ALLOYS COMPANY, LLC**, a Delaware limited liability company, acting by

Brian D' Amico

/s/ Brian D' Amico

(PRINT NAME))

(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **ALABAMA SAND AND GRAVEL, INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GSM SALES, INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GATLIFF SERVICES, LLC**, a Delaware limited liability company, acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GSM ENTERPRISES HOLDINGS INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GSM ENTERPRISES LLC**, a Delaware limited liability company, acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GBG HOLDINGS, LLC**, a Delaware limited liability company, acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GLOBE METALS ENTERPRISES, LLC**, a Delaware limited liability company, acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GSM ALLOYS II INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico /s/ Brian D' Amico

(PRINT NAME)) *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **GSM ALLOYS I INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico /s/ Brian D' Amico

(PRINT NAME)) *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by **SOLSIL, INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico /s/ Brian D' Amico

(PRINT NAME)) *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

Executed as a deed by for **GSM FINANCIAL, INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by **NORCHEM, INC.**, a corporation incorporated in Florida, U.S.A., acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — (AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by **QSIP CANADA ULC,** a company amalgamated and subsisting under the laws of the Province of Nova Scotia, Canada**,** acting by

Brian D' Amico — /s/ Brian D' Amico

(PRINT NAME)) — *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that jurisdiction, is acting under the authority of that company.

Executed as a deed by **GLOBE SPECIALTY METALS, INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D' Amico

/s/ Brian D' Amico

(PRINT NAME)) *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

The Security Agent

GLAS TRUST CORPORATION LIMITED

By: /s/ Paul Cattermole

Address: 45 Ludgate Hill, London, EC4M 7JU

Fax: +44 (0) 20 3070 0113

Attention: MANAGER DCM/ FERROGLOBE

The Original Super Senior Note Trustee

GLAS TRUSTEES LIMITED

By: /s/ Paul Cattermole

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

The Intra-Group Lenders

Executed as a deed by

FERROGLOBE FINANCE COMPANY, PLC

acting by

MARCO LEVI /s/ Marco Levi

(PRINT NAME) Director

in the presence of:

Name: LUCIA BLASCO CUE /s/ Lucía Blasco Cué

(BLOCK CAPITALS) *(SIGNATURE OF WITNESS)*

Address: P. CASELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by

FERROGLOBE PLC

acting by

MARCO LEVI /s/ Marco Levi

(PRINT NAME) Director

in the presence of:

Name: LUCIA BLASCO CUE /s/ Lucía Blasco Cué

(BLOCK CAPITALS) *(SIGNATURE OF WITNESS)*

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **GRUPO FERROATLANTICA S.A.U.**, a limited liability company (s*ociedad anónima unipersonal*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by **GLOBE SPECIALTY METALS, INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian D'Amico

(PRINT NAME))

/s/ Brian D' Amico

(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROPEM S.A.S.,** a limited liability company (société par actions simplifiée), pursuant to a power of attorney dated 11 May 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **CUARZOS INDUSTRIALES S.A.U.**, a limited liability company (s*ociedad anónima unipersonal*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner
(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE
(BLOCK CAPITALS)

/s/ Lucía Blasco Cué
(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

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Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROSOLAR OPCO GROUP, S.L.**, a limited liability company (s*ociedad limitada*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner
(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

/s/ Lucía Blasco Cué

(BLOCK CAPITALS) *(SIGNATURE OF WITNESS)*

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

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Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROGLOBE MANGAN NORGE AS**, a limited liability company (*aksjeselskap*), pursuant to a power of attorney dated 7 May 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE /s/ Lucía Blasco Cué

(BLOCK CAPITALS) *(SIGNATURE OF WITNESS)*

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by

THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROGLOBE MANGANESE FRANCE S.A.S.**, a limited liability company (*société par actions simplifiée*), pursuant to a power of attorney dated 11 May 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

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THOMAS WIESNER

(PRINT NAME OF ATTORNEY)

as attorney for **FERROATLANTICA PARTICIPACIONES, S.L.U.**, a limited liability company (s*ociedad anónima unipersonal*), pursuant to a power of attorney dated 28 April 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY)

in the presence of:

Name: LUCIA BLASCO CUE /s/ Lucía Blasco Cué

(BLOCK CAPITALS) *(SIGNATURE OF WITNESS)*

Address: P. CASTELLANA 259 D

28046 MADRID

SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by **GLOBE METALLURGICAL INC**., a corporation incorporated in Delaware, U.S.A., acting by

Brian J. D'Amico /s/ Brian J. D' Amico

(PRINT NAME)) *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by **SOLSIL, INC.**, a corporation incorporated in Delaware, U.S.A., acting by

Brian J. D'Amico /s/ Brian J. D' Amico

(PRINT NAME)) *(AUTHORISED SIGNATORY)*

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMENT*]

Executed as a deed by **NORCHEM, INC.**, a corporation incorporated in Florida, U.S.A., acting by

Brian D'Amico

(PRINT NAME))

/s/ Brian J. D' Amico

(AUTHORISED SIGNATORY)

who, in accordance with the laws of that territory, is acting under the authority of that company.

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]

Executed as a deed by

Thomas Wiesner

(PRINT NAME OF ATTORNEY)

as attorney for **GSM NETHERLANDS, B.V.**, a limited liability company (*besloten vennootschap*) pursuant to a power of attorney dated 7 May 2021

/s/ Thomas Wiesner

(SIGNATURE OF ATTORNEY-IN-FACT)

in the presence of:

Name: LUCIA BLASCO CUE

(BLOCK CAPITALS)

/s/ Lucía Blasco Cué

(SIGNATURE OF WITNESS)

Address: P. Castellana 259 D

28046 MADRID, SPAIN

Occupation: LAWYER

[*SIGNATURE PAGE – PROJECT FOX – NOTES INTERCREDITOR AGREEMEN*T]
