United States
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Quarterly Period Ended September 30, 2014

Commission File Number 1-12984

Eagle Materials Inc.

Delaware
(State of Incorporation)

75-2520779
(I.R.S. Employer Identification No.)

3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219
(Address of principal executive offices)

(214) 432-2000
(Registrant's telephone number)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.)

Yes ☐ No ☒

As of October 31, 2014, the number of outstanding shares of common stock was:

Class	Outstanding Shares
Common Stock, $.01 Par Value	50,262,957

Eagle Materials Inc. and Subsidiaries
Form 10-Q
September 30, 2014

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PART I. FINANCIAL INFORMATION (unaudited)

Eagle Materials Inc. and Subsidiaries
Consolidated Statements of Earnings
(dollars in thousands, except share data)
(unaudited)

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
Revenues	$ 284,808	$ 252,646	$ 551,059	$ 479,690
Cost of Goods Sold	209,747	193,167	419,597	373,607
Gross Profit	75,061	59,479	131,462	106,083
Equity in Earnings of Unconsolidated Joint Venture	12,051	9,747	21,851	17,625
Corporate General and Administrative	(7,414)	(6,060)	(14,456)	(11,654)
Acquisition and Litigation Expense	(2,103)	-	(2,103)	-
Other Income	883	317	1,562	900
Interest Expense, Net	(3,901)	(4,795)	(7,953)	(9,750)
Earnings Before Income Taxes	74,577	58,688	130,363	103,204
Income Tax Expense	(24,258)	(18,785)	(42,334)	(33,200)
Net Earnings	$ 50,319	$ 39,903	$ 88,029	$ 70,004
EARNINGS PER SHARE:				
Basic	$ 1.01	$ 0.81	$ 1.78	$ 1.43
Diluted	$ 1.00	$ 0.80	$ 1.75	$ 1.40
AVERAGE SHARES OUTSTANDING:				
Basic	49,591,495	49,012,045	49,546,916	48,984,038
Diluted	50,427,286	49,860,100	50,357,914	49,835,382
CASH DIVIDENDS PER SHARE:	$ 0.10	$ 0.10	$ 0.20	$ 0.20

See notes to unaudited consolidated financial statements.

Eagle Materials Inc. and Subsidiaries
Consolidated Statements of Comprehensive Earnings
(unaudited – dollars in thousands)

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
Net Earnings	$ 50,319	$ 39,903	$ 88,029	$ 70,004
Change in Funded Status of Defined Benefit Plans:				
Amortization of Net Actuarial Loss	163	238	326	476
Tax Expense	(57)	(83)	(114)	(166)
Comprehensive Earnings	$ 50,425	$ 40,058	$ 88,241	$ 70,314

See notes to unaudited consolidated financial statements.

Eagle Materials Inc. and Subsidiaries
Consolidated Balance Sheets
(dollars in thousands)

	September 30, 2014 (unaudited)	March 31, 2014
ASSETS		
Current Assets -		
Cash and Cash Equivalents	$ 11,063	$ 6,482
Accounts and Notes Receivable	132,823	102,917
Inventories	190,711	187,096
Prepaid and Other Assets	6,309	10,465
Total Current Assets	340,906	306,960
Property, Plant and Equipment -	1,698,495	1,660,975
Less: Accumulated Depreciation	(708,311)	(676,924)
Property, Plant and Equipment, net	990,184	984,051
Notes Receivable	2,966	3,063
Investment in Joint Venture	45,489	43,008
Goodwill and Intangible Assets	159,835	160,690
Other Assets	15,007	13,757
	$ 1,554,387	$ 1,511,529
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities -		
Accounts Payable	$ 66,953	$ 57,098
Accrued Liabilities	47,845	41,520
Income Taxes Payable	8,610	702
Current Portion of Long-term Debt	9,500	9,500
Total Current Liabilities	132,908	108,820
Long-term Debt	302,759	371,759
Other Long-term Liabilities	54,070	53,678
Deferred Income Taxes	142,259	145,773
Total Liabilities	631,996	680,030
Stockholders' Equity -		
Preferred Stock, Par Value $0.01; Authorized 5,000,000 Shares; None Issued	—	—
Common Stock, Par Value $0.01; Authorized 100,000,000 Shares; Issued and Outstanding 50,265,957 and 50,053,738 Shares, respectively	503	501
Capital in Excess of Par Value	266,212	253,524
Accumulated Other Comprehensive Losses	(5,271)	(5,483)
Retained Earnings	660,947	582,957
Total Stockholders' Equity	922,391	831,499
	$ 1,554,387	$ 1,511,529

See notes to the unaudited consolidated financial statements.

Eagle Materials Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(unaudited – dollars in thousands)

	For the Six Months Ended September 30,	
	2014	2013
CASH FLOWS FROM OPERATING ACTIVITIES		
Net Earnings	$ 88,029	$ 70,004
Adjustments to Reconcile Net Earnings to Net Cash Provided by Operating Activities -		
Depreciation, Depletion and Amortization	34,864	34,624
Deferred Income Tax Provision	(3,628)	(3,594)
Stock Compensation Expense	6,702	4,816
Excess Tax Benefits from Share Based Payment Arrangements	(3,195)	(1,053)
Equity in Earnings of Unconsolidated Joint Venture	(21,851)	(17,625)
Distributions from Joint Venture	19,375	20,500
Changes in Operating Assets and Liabilities:		
Accounts and Notes Receivable	(29,809)	(30,132)
Inventories	(3,615)	(7,712)
Accounts Payable and Accrued Liabilities	16,878	(2,894)
Other Assets	2,798	(1,203)
Income Taxes Payable	11,103	13,524
Net Cash Provided by Operating Activities	117,651	79,255
CASH FLOWS FROM INVESTING ACTIVITIES		
Property, Plant and Equipment Additions	(40,039)	(31,583)
Net Cash Used in Investing Activities	(40,039)	(31,583)
CASH FLOWS FROM FINANCING ACTIVITIES		
Decrease in Credit Facility	(69,000)	(34,000)
Dividends Paid to Stockholders	(10,019)	(9,910)
Proceeds from Stock Option Exercises	4,092	2,351
Shares Redeemed to Settle Employee Taxes on Stock Compensation	(1,299)	(435)
Excess Tax Benefits from Share Based Payment Arrangements	3,195	1,053
Net Cash Used in Financing Activities	(73,031)	(40,941)
NET INCREASE IN CASH AND CASH EQUIVALENTS	4,581	6,731
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	6,482	3,897
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 11,063	$ 10,628

See notes to the unaudited consolidated financial statements.

(A) BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements as of and for the six month period ended September 30, 2014 include the accounts of Eagle Materials Inc. and its majority-owned subsidiaries (the "Company", "us" or "we") and have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. These unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the notes thereto included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on May 23, 2014.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations, although we believe that the disclosures are adequate to make the information presented not misleading. In our opinion, all adjustments (consisting solely of normal recurring adjustments) necessary to present fairly the information in the following unaudited consolidated financial statements of the Company have been included. The results of operations for interim periods are not necessarily indicative of the results for the full year.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

We have chosen to separately present certain costs on a single line item on our consolidated statement of earnings titled Acquisition and Litigation Expense. These expenses consist of acquisition transaction costs of approximately $0.4 million and legal fees related to our lawsuit against the Internal Revenue Service ("IRS") of approximately $1.7 million. See Footnotes (B) and (O) to the Unaudited Consolidated Financial Statements for more information.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board issued Accounting Standards Update ("ASU") 2014-09, "Revenue from Contracts with Customers." ASU 2014-09 supersedes the revenue recognition requirements in "Revenue Recognition (Topic 605)," and requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. The standard will be effective for us in the first quarter of fiscal 2018, with early adoption not permitted. There are two transition methods available under the new standard, either cumulative effect or retrospective. We are currently evaluating the impact of this ASU and have not yet selected a transition method.

(B) PENDING ACQUISITION

On October 16, 2014, Northern White Sand LLC ("NWS"), a wholly owned subsidiary of the Company, entered into a securities purchase agreement to acquire all of the outstanding equity interest in CRS Holdco LLC, CRS Proppants LLC and Great Northern Sand LLC and related entities (collectively "CRS Proppants") (such acquisition, the "Pending Acquisition"). CRS Proppants is a supplier of frac sand to the energy industry, and its business currently consists of a frac sand mine in New Auburn, Wisconsin, and a transload network into Texas and southwest Oklahoma. CRS Proppants also has multi-year sales contracts with customers for approximately 85% of its current and prospective production volumes.

The purchase price (the “Purchase Price”) to be paid by the Company in the Pending Acquisition is approximately $225.0 million, subject to adjustments for working capital and other customary post-closing adjustments, including in-process capital expenditures paid through closing. We expect to fund the payment of the Purchase Price and expenses incurred in connection with the Pending Acquisition through operating cash flow and borrowings under our bank credit facility, which was amended and restated on October 30, 2014. This transaction is expected to close during our fiscal third quarter. See Footnote (L) to the Unaudited Consolidated Financial Statements for more information about the amended bank credit facility.

(C) CASH FLOW INFORMATION—SUPPLEMENTAL

Cash payments made for interest were $7.3 million and $9.0 million for the six months ended September 30, 2014 and 2013, respectively. Net payments made for federal and state income taxes during the six months ended September 30, 2014 and 2013, were $32.2 million and $20.8 million, respectively.

(D) ACCOUNTS AND NOTES RECEIVABLE

Accounts and notes receivable have been shown net of the allowance for doubtful accounts of $6.1 million and $5.8 million at September 30, 2014 and March 31, 2014, respectively. We perform ongoing credit evaluations of our customers’ financial condition and generally require no collateral from our customers. The allowance for non-collection of receivables is based upon analysis of economic trends in the construction industry, detailed analysis of the expected collectability of accounts receivable that are past due and the expected collectability of overall receivables. We have no significant credit risk concentration among our diversified customer base.

We had notes receivable totaling approximately $3.7 million at September 30, 2014, of which approximately $0.8 million has been classified as current and presented with accounts receivable on the balance sheet. We lend funds to certain companies in the ordinary course of business, and the notes bear interest, on average, at LIBOR plus 3.5%. Remaining unpaid amounts, plus accrued interest, mature on various dates between 2014 and 2017. The notes are collateralized by certain assets of the borrowers, namely property and equipment, and are generally payable monthly. We monitor the credit risk of each borrower by focusing on the timeliness of payments, review of credit history and credit metrics and interaction with the borrowers.

(E) STOCKHOLDERS' EQUITY

A summary of changes in stockholders' equity follows:

	For the Six Months Ended September 30, 2014 (dollars in thousands)
Common Stock –	
Balance at Beginning of Period	$ 501
Stock Option Exercises	2
Balance at End of Period	503
Capital in Excess of Par Value –	
Balance at Beginning of Period	253,524
Stock Compensation Expense	6,702
Shares Redeemed to Settle Employee Taxes	(1,299)
Stock Option Exercises	7,285
Balance at End of Period	266,212
Retained Earnings –	
Balance at Beginning of Period	582,957
Dividends Declared to Stockholders	(10,039)
Net Earnings	88,029
Balance at End of Period	660,947
Accumulated Other Comprehensive Loss -	
Balance at Beginning of Period	(5,483)
Change in Funded Status of Pension Plan, net of tax	212
Balance at End of Period	(5,271)
Total Stockholders' Equity	$ 922,391

There were no open market share repurchases during the three and six month periods ended September 30, 2014. As of September 30, 2014, we have authorization to purchase an additional 717,300 shares.

(F) INVENTORIES

Inventories are stated at the lower of average cost (including applicable material, labor, depreciation, and plant overhead) or market, and consist of the following:

	As of	
	September 30, 2014	March 31, 2014
	(dollars in thousands)	
Raw Materials and Material-in-Progress	$ 91,255	$ 82,319
Finished Cement	12,965	19,173
Gypsum Wallboard	7,400	7,144
Frac Sand	376	275
Aggregates	10,869	11,815
Paperboard	3,936	4,102
Repair Parts and Supplies	57,331	56,119
Fuel and Coal	6,579	6,149
	$ 190,711	$ 187,096

(G) ACCRUED EXPENSES

Accrued expenses consist of the following:

	As of	
	September 30, 2014	March 31, 2014
	(dollars in thousands)	
Payroll and Incentive Compensation	$ 14,956	$ 12,855
Benefits	10,139	10,158
Interest	4,813	4,813
Property Taxes	5,008	2,801
Power and Fuel	1,836	2,132
Sales and Use Tax	868	658
Legal	1,341	1,831
Acquisition and Litigation	2,103	-
Other	6,781	6,272
	$ 47,845	$ 41,520

(H) SHARE-BASED EMPLOYEE COMPENSATION

On August 7, 2013 our stockholders approved the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), which increased the shares we are authorized to issue as awards by 3,000,000 (1,500,000 of which may be stock awards). Under the terms of the Plan, we can issue equity awards, including stock options, restricted stock units ("RSUs"), restricted stock and stock appreciation rights to employees of the Company and members of the Board of Directors. Awards that were already outstanding prior to the approval of the Plan on August 7, 2013 remain outstanding. The Compensation Committee of our Board of Directors specifies the terms for grants of equity awards under the Plan.

Long-Term Compensation Plans -

Options. In June 2014, the Compensation Committee approved an incentive equity award of an aggregate of 193,636 stock options pursuant to the Plan to certain officers and key employees (the "Fiscal 2015 Employee Stock Option Grant") that will be earned if our ten year return on equity is at least 15% at March 31, 2015. If this criterion is not met, all of the options will be forfeited. If the criterion is met, the award may be reduced by the Compensation Committee based on individual performance goals. Following any such reduction, the earned options will vest ratably over three years, with the first third vesting promptly following the determination date, and the remaining options vesting on March 31, 2016 and 2017. The stock options have a term of ten years from the date of grant. In August 2014, we granted 18,515 options to members of the Board of Directors (the "Fiscal 2015 Board of Directors Grant"). Options granted under the Fiscal 2015 Board of Directors Grant vest immediately and can be exercised from the date of grant until their expiration on the tenth anniversary of the date of grant.

The Fiscal 2015 Employee Stock Option Grant and Fiscal 2015 Board of Directors Grants were valued at the grant date using the Black-Scholes option pricing model. The weighted-average assumptions used in the Black-Scholes model to value the option awards in fiscal 2015 are as follows:

	Fiscal 2015
Dividend Yield	2.0%
Expected Volatility	44.8%
Risk Free Interest Rate	1.8%
Expected Life	6.0 years

Stock option expense for all outstanding stock option awards totaled approximately $2.0 million and $3.4 million for the three and six month periods ended September 30, 2014, respectively, and $1.9 million and

$2.7 million for the three and six month periods ended September 30, 2013, respectively. At September 30, 2014, there was approximately $11.9 million of unrecognized compensation cost related to outstanding stock options, net of estimated forfeitures, which is expected to be recognized over a weighted-average period of 3.1 years.

The following table represents stock option activity for the six month period ended September 30, 2014:

	Number of Shares	Weighted-Average Exercise Price
Outstanding Options at Beginning of Period	2,788,999	$ 41.83
Granted	217,151	$ 87.91
Exercised	(144,420)	$ 32.36
Cancelled	(1,269,500)	$ 47.50
Outstanding Options at End of Period	1,592,230	$ 44.49
Options Exercisable at End of Period	1,037,331	$ 34.33
Weighted-Average Fair Value of Options Granted during the Period	$ 32.44	

The following table summarizes information about stock options outstanding at September 30, 2014:

	Outstanding Options			Exercisable Options	
Range of Exercise Prices	Number of Shares Outstanding	Weighted - Average Remaining Contractual Life	Weighted - Average Exercise Price	Number of Shares Outstanding	Weighted - Average Exercise Price
$23.17 – $ 30.74	594,310	4.69	$ 26.50	591,310	$ 26.48
$33.08 – $ 40.78	492,533	7.35	$ 33.97	312,917	$ 34.02
$53.22 – $ 74.10	283,236	8.32	$ 66.58	114,589	$ 66.37
$87.34 – $ 93.56	222,151	9.68	$ 87.89	18,515	$ 91.95
	1,592,230	6.86	$ 44.50	1,037,331	$ 34.33

At September 30, 2014, the aggregate intrinsic value for outstanding and exercisable options was approximately $91.3 million and $35.6 million, respectively. The total intrinsic value of options exercised during the six month period ended September 30, 2014 was approximately $9.2 million.

Restricted Stock. In June 2014, the Compensation Committee approved the granting of an aggregate of 80,416 shares of restricted stock to certain officers and key employees (the “Fiscal 2015 Employee Restricted Stock Award”) that will be earned if our ten year return on equity is at least 15% at March 31, 2015. If this criterion is not met, all of the shares will be forfeited. If the criterion is met, the award may be reduced by the Compensation Committee based on individual performance goals. Following any such reduction, restrictions on the earned shares will lapse ratably over five years, with the first fifth lapsing promptly following the determination date, and the remaining restrictions lapsing on March 31, 2016 through 2019. The value of the Fiscal 2015 Employee Restricted Stock Award, net of estimated forfeitures, is being expensed over a five year period. In August 2014, we granted 7,457 shares of restricted stock to members of the Board of Directors (the “Board of Directors Fiscal 2015 Restricted Stock Award”). Awards issued under the Board of Directors Fiscal 2015 Restricted Stock Award do not fully vest until the retirement of each director, in accordance with the Company’s director retirement policy.

Expense related to restricted shares was approximately $1.8 million and $3.3 million for the three and six month periods ended September 30, 2014, respectively, and $1.2 million and $2.1 million for the three and six month periods ended September 30, 2013, respectively. At September 30, 2014, there was approximately $19.7 million of unearned compensation from restricted stock, net of estimated forfeitures, which will be recognized over a weighted-average period of 3.0 years.

The number of shares available for future grants of stock options, restricted stock units, stock appreciation rights and restricted stock under the Plan was 4,986,278 at September 30, 2014.

(L) COMPUTATION OF EARNINGS PER SHARE

The calculation of basic and diluted common shares outstanding is as follows:

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
Weighted-Average Shares of Common Stock Outstanding	49,591,495	49,012,045	49,546,916	48,984,038
Common Equivalent Shares:				
Assumed Exercise of Outstanding Dilutive Options	1,423,211	1,682,592	1,453,437	1,692,782
Less: Shares Repurchased from Assumed Proceeds of Assumed Exercised Options	(891,837)	(1,134,329)	(933,050)	(1,137,668)
Restricted Shares	304,417	299,792	290,611	296,230
Weighted-Average Common and Common Equivalent Shares Outstanding	50,427,286	49,860,100	50,357,914	49,835,382
Shares Excluded Due to Anti-dilution Effects	218,636	121,957	170,227	71,479

During the quarter ended June 30, 2014, approximately 1,270,000 options expired without the performance criteria having been met.

(J) PENSION AND EMPLOYEE BENEFIT PLANS

We sponsor several defined benefit and defined contribution pension plans which together cover substantially all our employees. Benefits paid under the defined benefit plans covering certain hourly employees are based on years of service and the employee's qualifying compensation over the last few years of employment.

The following table shows the components of net periodic cost for our plans:

	For the Three Months Ended September 30,		For the Six Months ended September 30,	
	2014	2013	2014	2013
	(dollars in thousands)		(dollars in thousands)	
Service Cost – Benefits Earned During the Period	$ 236	$ 197	$ 472	$ 393
Interest Cost of Benefit Obligations	315	306	630	611
Expected Return on Plan Assets	(414)	(343)	(828)	(686)
Recognized Net Actuarial Loss	155	247	310	492
Amortization of Prior-Service Cost	3	2	6	8
Net Periodic Pension Cost	$ 295	$ 409	$ 590	$ 818

(K) INCOME TAXES

Income taxes for the interim period presented have been included in the accompanying financial statements on the basis of an estimated annual effective tax rate. In addition to the amount of tax resulting from applying the estimated annual effective tax rate to pre-tax income, we will, when appropriate, include certain items treated as discrete events to arrive at an estimated overall tax amount. The effective tax rate for both the three and six months ended September 30, 2014 was approximately 32%, which increased from the prior year due to the reduction in the impact of our depletion deduction as a result of increased earnings in fiscal year 2014.

In September 2013, the Internal Revenue Service enacted final guidance regarding the deduction and capitalization of expenditures related to tangible property ("tangible property regulations"). The tangible property

regulations clarify and expand sections 162(a) and 263(a) of the Internal Revenue Code which relate to amounts paid to acquire, produce, or improve tangible property. Additionally, the tangible property regulations provide final guidance under section 167 regarding accounting for and retirement of depreciable property and regulations under section 168 relating to the accounting for property under the Modified Accelerated Cost Recovery System. The tangible property regulations affect all taxpayers that acquire, produce, or improve tangible property, which includes the Company, and generally apply to taxable years beginning on or after January 1, 2014, which will impact us for the fiscal year ending March 31, 2015. We have evaluated the tangible property regulations and determined the regulations will not have a material impact on our financial condition, results of operations or cash flows.

(L) LONG-TERM DEBT

Long-term debt consists of the following:

	As of	
	June 30, 2014	March 31, 2014
	(dollars in thousands)	
Credit Facility	$ 120,000	$ 189,000
Senior Notes	192,259	192,259
Total Debt	312,259	381,259
Less: Current Portion of Long-term Debt	(9,500)	(9,500)
Total Debt	$ 302,759	$ 371,759

Credit Facility –

Our Credit Facility was amended and restated on October 30, 2014 (the "Amended Credit Facility"). The Amended Credit Facility increased available borrowings from $400.0 million to $500.0 million and extended the term from December 15, 2015 to October 30, 2019. Borrowings under the Amended Credit Facility are guaranteed by substantially all of the Company's subsidiaries. At the option of the Company, outstanding principal amounts on the Amended Credit Facility bear interest at a variable rate equal to (i) LIBOR, plus an agreed margin (ranging from 100 to 225 basis points), which is to be established quarterly based upon the Company's ratio of consolidated EBITDA, defined as earnings before interest, taxes, depreciation and amortization, to the Company's consolidated indebtedness (the "Leverage Ratio"), or (ii) an alternative base rate which is the higher of (a) the prime rate or (b) the federal funds rate plus ½% per annum plus an agreed margin (ranging from 0 to 125 basis points). Interest payments are payable, in the case of loans bearing interest at a rate based on the federal funds rate, quarterly, or in the case of loans bearing interest at a rate based on LIBOR, at the end of the LIBOR advance periods, which can be a period of up to six months at the option of the Company. The Company is also required to pay a commitment fee on unused available borrowings under the Amended Credit Facility ranging from 10 to 35 basis points depending upon the Leverage Ratio. The Amended Credit Facility contains customary covenants that restrict our ability to incur additional debt, encumber our assets, sell assets, make or enter into certain investments, loans or guaranties and enter into sale and leaseback arrangements. The Amended Credit Facility also requires us to maintain a consolidated indebtedness ratio (calculated as consolidated indebtedness to consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions) of 3.5:1.0 or less and an interest coverage ratio (consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions to consolidated interest expense) of at least 2.5:1.0. We had $120.0 million of borrowings outstanding at September 30, 2014. Based on our Leverage Ratio, we had $272.4 million of available borrowings, net of the outstanding letters of credit, at September 30, 2014.

The Amended Credit Facility has a $50.0 million letter of credit facility. Under the letter of credit facility, the Company pays a fee at a per annum rate equal to the applicable margin for Eurodollar loans in effect from time to time plus a one-time letter of credit fee in an amount equal to 0.125% of the initial stated amount. At September 30, 2014, we had $7.6 million of letters of credit outstanding.

Senior Notes -

We entered into a Note Purchase Agreement on November 15, 2005 (the "2005 Note Purchase Agreement") related to our sale of $200 million of senior, unsecured notes, designated as Series 2005A Senior Notes (the "Series 2005A Senior Notes") in a private placement transaction. The Series 2005A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in three tranches on November 15, 2005. Since entering into the 2005 Note Purchase Agreement, we have repurchased $81.1 million in principal of the Series 2005A Senior Notes (in periods prior to the fiscal year ended March 31, 2013). During November 2012, Tranche A of the Series 2005A Senior Notes matured and we retired the remaining $4.7 million in notes from this Tranche. Following these repurchases and maturities, the amounts outstanding for each of the remaining tranches are as follows:

	Principal	Maturity Date	Interest Rate
Tranche B	$ 57.0 million	November 15, 2015	5.38%
Tranche C	$ 57.2 million	November 15, 2017	5.48%

Interest for each tranche of Notes is payable semi-annually on the 15th day of May and the 15th day of November of each year until all principal is paid for the respective tranche.

We also entered into an additional Note Purchase Agreement on October 2, 2007 (the "2007 Note Purchase Agreement") related to our sale of $200 million of senior, unsecured notes, designated as Series 2007A Senior Notes (the "Series 2007A Senior Notes") in a private placement transaction. The Series 2007A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in four tranches on October 2, 2007. Since entering into the 2007 Note Purchase Agreement, we have repurchased $122.0 million in principal of the Series 2007A Senior Notes (in periods prior to the fiscal year ended March 31, 2013). Following the repurchase, the amounts outstanding for each of the four tranches are as follows:

	Principal	Maturity Date	Interest Rate
Tranche A	$ 9.5 million	October 2, 2014	6.08%
Tranche B	$ 8.0 million	October 2, 2016	6.27%
Tranche C	$ 24.0 million	October 2, 2017	6.36%
Tranche D	$ 36.5 million	October 2, 2019	6.48%

Interest for each tranche of Notes is payable semi-annually on the second day of April and the second day of October of each year until all principal is paid for the respective tranche.

On October 2, 2014 we repaid the $9.5 million outstanding under Tranche A of the Series 2007 Senior Notes.

Our obligations under the 2005 Note Purchase Agreement and the 2007 Note Purchase Agreement (collectively referred to as the "Note Purchase Agreements") and the Series 2005A Senior Notes and the Series 2007A Senior Notes (collectively referred to as "the Senior Notes") are equal in right of payment with all other senior, unsecured debt of the Company, including our debt under the Amended Credit Facility. The Note Purchase Agreements contain customary restrictive covenants, including covenants that place limits on our ability to encumber our assets, to incur additional debt, to sell assets, or to merge or consolidate with third parties, as well as certain cross covenants with the Amended Credit Facility. We were in compliance with all financial ratios and tests at September 30, 2014 and throughout the fiscal year.

Pursuant to a Subsidiary Guaranty Agreement, substantially all of our subsidiaries have guaranteed the punctual payment of all principal, interest, and Make-Whole Amounts (as defined in the Note Purchase Agreements) on the Senior Notes and the other payment and performance obligations of the Company contained in the Senior Notes and in the Note Purchase Agreements. We are permitted, at our option and without penalty, to prepay from time to time at least 10% of the original aggregate principal amount of the Senior Notes at 100% of the principal amount to be prepaid, together with interest accrued on such amount to be prepaid to the date of payment, plus a Make-Whole Amount. The Make-Whole Amount is computed by discounting the remaining

scheduled payments of interest and principal of the Senior Notes being prepaid at a discount rate equal to the sum of 50 basis points and the yield to maturity of U.S. treasury securities having a maturity equal to the remaining average life of the Senior Notes being prepaid.

We are leasing one of our cement plants from the city of Sugar Creek, Missouri. The city of Sugar Creek issued industrial revenue bonds to partly finance improvements to the cement plant. The lease payments due to the city of Sugar Creek under the cement plant lease, which was entered into upon the sale of the industrial revenue bonds, are equal in amount to the payments required to be made by the city of Sugar Creek to the holders of the industrial revenue bonds. Because we are the holder of all of the outstanding industrial revenue bonds, no debt is reflected on our financial statements in connection with our lease of the cement plant. At the conclusion of the lease in fiscal 2021, we have the option to purchase the cement plant for a nominal amount.

(M) SEGMENT INFORMATION

Operating segments are defined as components of an enterprise that engage in business activities that earn revenues, incur expenses and prepare separate financial information that is evaluated regularly by our chief operating decision maker in order to allocate resources and assess performance. During the quarter ended June 30, 2014, we changed our segment presentation to reflect Oil and Gas Proppants, which had been included in Concrete and Aggregates, as a separate segment. We have adjusted the prior period segment presentation to reflect this change for comparative purposes.

We operate in five business segments: Cement, Gypsum Wallboard, Recycled Paperboard, Concrete and Aggregates and Oil and Gas Proppants, with Gypsum Wallboard and Cement currently being our principal lines of business. These operations are conducted in the U.S. and include the mining of limestone and the manufacture, production, distribution and sale of Portland cement (a basic construction material which is the essential binding ingredient in concrete), the mining of gypsum and the manufacture and sale of gypsum wallboard, the manufacture and sale of recycled paperboard to the gypsum wallboard industry and other paperboard converters, the sale of readymix concrete and the mining and sale of aggregates (crushed stone, sand and gravel) and sand used in hydraulic fracturing (“frac sand”). These products are used primarily in commercial and residential construction, public construction projects and projects to build, expand and repair roads and highways and in oil and natural gas extraction.

We operate six cement plants, sixteen cement distribution terminals, five gypsum wallboard plants, including the plant temporarily idled in Bernalillo, N.M., a gypsum wallboard distribution center, a recycled paperboard mill, seventeen readymix concrete batch plant locations, four aggregates processing plant locations and a frac sand mine and processing facility. The principal markets for our cement products are Texas, northern Illinois (including Chicago), the central plains, the Rocky Mountains, northern Nevada, and northern California. Gypsum wallboard and recycled paperboard are distributed throughout the continental U.S, with the exception of the northeast. Concrete and aggregates are sold to local readymix producers and paving contractors in the Austin, Texas area, north of Sacramento, California and the greater Kansas City, Missouri area, while frac sand is currently sold in Texas.

We conduct one of our six cement plant operations, Texas Lehigh Cement Company LP in Buda, Texas, through a Joint Venture. For segment reporting purposes only, we proportionately consolidate our 50% share of the Joint Venture’s revenues and operating earnings, which is consistent with the way management reports the segments within the Company for making operating decisions and assessing performance.

We account for intersegment sales at market prices. The following table sets forth certain financial information relating to our operations by segment:

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
	(dollars in thousands)		(dollars in thousands)	
Revenues -				
Cement	$ 145,861	$ 133,204	$ 273,797	$ 250,904
Gypsum Wallboard	111,655	98,960	224,332	194,941
Paperboard	35,579	34,642	73,058	66,805
Oil and Gas Proppants	10,414	1,250	21,594	2,192
Concrete and Aggregates	31,961	28,847	58,123	53,111
Sub-total	335,470	296,903	650,904	567,953
Less: Intersegment Revenues	(17,523)	(16,879)	(34,128)	(32,481)
Net Revenues, including Joint Venture	317,947	280,024	616,776	535,472
Less: Joint Venture	(33,139)	(27,378)	(65,717)	(55,782)
Net Revenues	$ 284,808	$ 252,646	$ 551,059	$ 479,690

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
	(dollars in thousands)		(dollars in thousands)	
Intersegment Revenues -				
Cement	$ 2,911	$ 2,955	$ 5,271	$ 4,947
Paperboard	14,324	13,650	28,340	26,862
Concrete and Aggregates	288	274	517	672
	$ 17,523	$ 16,879	$ 34,128	$ 32,481
Cement Sales Volume (in thousands of tons) -				
Wholly –owned Operations	1,193	1,182	2,200	2,161
Joint Venture	283	252	567	514
	1,476	1,434	2,767	2,675

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
	(dollars in thousands)		(dollars in thousands)	
Operating Earnings -				
Cement	$ 38,450	$ 32,430	$ 58,957	$ 51,440
Gypsum Wallboard	37,002	29,868	74,430	59,504
Paperboard	7,984	6,937	15,531	12,616
Oil and Gas Proppants	711	(951)	74	(1,806)
Concrete and Aggregates	2,965	942	4,321	1,954
Other, net	883	317	1,562	900
Sub-total	87,995	69,543	154,875	124,608
Corporate General and Administrative	(7,414)	(6,060)	(14,456)	(11,654)
Acquisition and Litigation Expense	(2,103)	-	(2,103)	-
Earnings Before Interest and Income Taxes	78,478	63,483	138,316	112,954
Interest Expense, net	(3,901)	(4,795)	(7,953)	(9,750)
Earnings Before Income Taxes	$ 74,577	$ 58,688	$ 130,363	$ 103,204
Cement Operating Earnings -				
Wholly–owned Operations	$ 26,399	$ 22,683	$ 37,106	$ 33,815
Joint Venture	12,051	9,747	21,851	17,625
	$ 38,450	$ 32,430	$ 58,957	$ 51,440
Capital Expenditures -				
Cement	$ 4,176	$ 2,069	$ 12,996	$ 5,836
Gypsum Wallboard	1,558	602	3,793	1,699
Paperboard	823	1,364	1,149	1,901
Oil and Gas Proppants	6,000	5,728	13,602	21,016
Concrete and Aggregates	4,219	583	8,349	1,131
Other	82	—	150	—
	$ 16,858	$ 10,346	$ 40,039	$ 31,583
Depreciation, Depletion and Amortization -				
Cement	$ 7,987	$ 7,811	$ 15,870	$ 15,648
Gypsum Wallboard	5,031	5,261	10,129	10,544
Paperboard	2,058	2,171	4,127	4,353
Oil and Gas Proppants	684	368	1,253	686
Concrete and Aggregates	1,369	1,342	2,593	2,700
Other, net	445	450	892	693
	$ 17,574	$ 17,403	$ 34,864	$ 34,624

	As of	
	September 30, 2014	March 31, 2014
	(dollars in thousands)	
Identifiable Assets -		
Cement	$ 778,307	$ 762,578
Gypsum Wallboard	409,758	412,566
Paperboard	124,002	125,045
Oil and Gas Proppants	118,083	71,366
Concrete and Aggregates	99,667	108,197
Corporate and Other	24,570	31,777
	$ 1,554,387	$ 1,511,529

Segment operating earnings, including the proportionately consolidated 50% interest in the revenues and expenses of the Joint Venture, represent revenues, less direct operating expenses, segment depreciation, and segment selling, general and administrative expenses. Corporate assets consist primarily of cash and cash equivalents, general office assets, miscellaneous other assets and unrecognized tax benefits. The segment breakdown of goodwill is as follows:

	As of	
	September 30, 2014	March 31, 2014
	(dollars in thousands)	
Cement	$ 8,359	$ 8,359
Gypsum Wallboard	116,618	116,618
Paperboard	7,538	7,538
	$ 132,515	$ 132,515

We perform our annual test of impairment on goodwill during the fourth quarter of our fiscal year. If business conditions in the operating units containing goodwill change substantially during the fiscal year, and we are unable to conclude that an impairment loss is not likely to occur, we will perform impairment tests for those business units during our quarterly periods. At September 30, 2014, we determined that impairment losses are not likely to occur; therefore, no impairment tests were performed during the quarter.

We temporarily idled our gypsum manufacturing facility in Bernalillo, N.M. beginning in December 2009, due to cyclical low gypsum wallboard demand. The carrying value of the Bernalillo plant was $2.8 million, and the carrying value of the equipment was $1.0 million at September 30, 2014, and we continue to depreciate the assets over their estimated useful life. We currently have a strong market position in New Mexico, and our Albuquerque gypsum wallboard facility is operating at close to capacity. We plan on resuming manufacturing at the Bernalillo facility in the future when demand for our products increases. Costs of maintaining the facility during the idling are not significant, and the facility was generating positive cash flow prior to being idled; therefore, we have determined that the value of the plant and equipment is not impaired. We are not currently considering the permanent closure of the Bernalillo facility. Any decision to permanently close Bernalillo would be the result of future changes in the building materials industry in the southwest United States and Rocky Mountain region, including changes in the production capacity or operations of our competitors, demand for gypsum wallboard or general macro-economic conditions, which we do not foresee at the present time. If we were to permanently close the Bernalillo facility, or if our expectations as to its use changed such that we project the future undiscounted cash flows from its operations would be insufficient to recover its carrying value due to the factors described above, or for any other reason, we would recognize impairment at that time. All of our other wallboard facilities are currently generating positive cash flow from operations.

Summarized financial information for the Joint Venture that is not consolidated is set out below (this summarized financial information includes the total amount for the Joint Venture and not our 50% interest in those amounts):

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
	(dollars in thousands)		(dollars in thousands)	
Revenues	$ 66,278	$ 54,756	$ 131,434	$ 111,564
Gross Margin	$ 25,369	$ 20,641	$ 45,827	$ 37,335
Earnings Before Income Taxes	$ 24,102	$ 19,649	$ 43,702	$ 35,568

	As of	
	September 30, 2014	March 31, 2014
	(dollars in thousands)	
Current Assets	$ 65,391	$ 59,029
Non-Current Assets	$ 43,470	$ 42,826
Current Liabilities	$ 19,838	$ 17,901

(N) INTEREST EXPENSE

The following components are included in interest expense, net:

	For the Three Months Ended September 30,		For the Six Months Ended September 30,	
	2014	2013	2014	2013
	(dollars in thousands)		(dollars in thousands)	
Interest (Income)	$ (1)	$ (1)	$ (2)	$ (2)
Interest Expense	3,510	4,410	7,170	8,969
Interest Expense – Income Taxes	174	163	348	326
Other Expenses	218	223	437	457
Interest Expense, net	$ 3,901	$ 4,795	$ 7,953	$ 9,750

Interest income includes interest on investments of excess cash. Components of interest expense include interest associated with the Senior Notes, the Amended Credit Facility and commitment fees based on the unused portion of the Amended Credit Facility. Other expenses include amortization of debt issuance costs, and credit facility costs.

Interest expense – Income Taxes relates to interest accrued on our unrecognized tax benefits, primarily related to the Republic Asset Acquisition.

(O) COMMITMENTS AND CONTINGENCIES

We have certain deductible limits under our workers' compensation and liability insurance policies for which reserves are established based on the undiscounted estimated costs of known and anticipated claims. We have entered into standby letter of credit agreements relating to workers' compensation and auto and general liability self-insurance. At September 30, 2014, we had contingent liabilities under these outstanding letters of credit of approximately $7.6 million.

In the ordinary course of business, we execute contracts involving indemnifications that are standard in the industry and indemnifications specific to a transaction such as sale of a business. These indemnifications may include claims relating to any of the following: environmental and tax matters; intellectual property rights; governmental regulations and employment-related matters; customer, supplier, and other commercial contractual relationships; construction contracts and financial matters. While the maximum amount to which the Company may be exposed under such agreements cannot be estimated, it is the opinion of management that these

indemnifications are not expected to have a material adverse effect on our consolidated financial position, results of operations or cash flows. We currently have no outstanding guarantees.

We are currently contingently liable for performance under $16.3 million in performance bonds required by certain states and municipalities, and their related agencies. The bonds are principally for certain reclamation obligations and mining permits. We have indemnified the underwriting insurance company against any exposure under the performance bonds. In our past experience, no material claims have been made against these financial instruments.

Outstanding Lawsuit against the IRS

As previously reported, the IRS completed the examination of our federal income tax returns for all of the fiscal years ended March 31, 2001 through 2006. The IRS issued Exam Reports and Notices of Proposed Adjustment on November 9, 2007 for the examination of the 2001, 2002 and 2003 tax years, and on February 5, 2010 for the examination of the 2004, 2005 and 2006 fiscal years, in which it denied certain depreciation deductions claimed by us with respect to assets acquired by us from Republic Group LLC in November 2000. In response to the examination reports, we previously paid an aggregate amount to the IRS, net of certain refunds of interest, of $97.9 million of taxes, penalties and interest with respect to these fiscal years. On May 4, 2011, we filed a lawsuit in Federal District Court to recover the $97.9 million of taxes, penalties and interest paid. In March 2013, the IRS agreed to suspend the audit for tax years 2007 through 2011 pending the outcome of our case before the Federal District Court. In September 2013, the judge heard arguments on each party's motion for summary judgment and in November 2013 the judge denied each such motion.

In September 2014 the Company and the IRS reached a tentative agreement to settle this case. The tentative settlement is subject to various governmental approvals. If the tentative agreement is approved, we will dismiss our lawsuit seeking to recover taxes, interest and penalties paid, as discussed above, in exchange for the IRS conceding 40% of the penalties, plus related interest, to date. If the settlement is not approved, we will continue to pursue our claims in court. In the event the settlement is approved, we will recognize the recovery of 40% of the penalties, which total approximately $5.8 million, plus the related interest thereon, in our consolidated statement of earnings during the period in which the settlement is finalized.

EPA Notice of Violation

On October 5, 2010, Region IX of the EPA issued a Notice of Violation and Finding of Violation ("NOV") alleging violations by our subsidiary, Nevada Cement Company ("NCC"), of the Clean Air Act ("CAA"). The NOV alleges that NCC made certain physical changes to its facility in the 1990s without first obtaining permits required by the Prevention of Significant Deterioration requirements and Title V permit requirements of the CAA. The EPA also alleges that NCC has failed to submit to EPA since 2002 certain reports required by the National Emissions Standard for Hazardous Air Pollutants General Provisions and the Portland Cement Manufacturing Industry Standards. On March 12, 2014, EPA Region IX issued a second NOV to NCC. The second NOV is materially similar to the 2010 NOV except that it alleges violations of the new source performance standards ("NSPS") for Portland cement plants. The NOVs state that the EPA may seek penalties although it does not propose or assess any specific level of penalties or specify what relief the EPA will seek for the alleged violations. NCC believes it has meritorious defenses to the allegations in the NOVs. NCC met with the EPA in December 2010, September 2012 and May 2014 to present its defenses and to discuss a resolution of the alleged violations. EPA and NCC remain in discussions regarding the alleged violations. If a negotiated settlement cannot be reached, NCC intends to vigorously defend these matters in any enforcement action that may be pursued by the EPA. As a part of a settlement, or should NCC fail in its defense in any enforcement action, NCC could be required to make substantial capital expenditures to modify its facility and incur increased operating costs. NCC could also be required to pay significant civil penalties. Additionally, an enforcement action could take many years to resolve the underlying issues alleged in the NOV. We are currently unable to determine the final outcome of this matter or the impact of an unfavorable determination upon our financial position or results of operations.

Domestic Wallboard Antitrust Litigation

Since late December 2012, several purported class action lawsuits were filed in various United States district courts, including the Eastern District of Pennsylvania, Western District of North Carolina and the Northern District of Illinois, against the Company's subsidiary, American Gypsum Company LLC ("American Gypsum"), alleging that American Gypsum conspired with other wallboard manufacturers to fix the price for drywall sold in the United States in violation of federal antitrust laws and, in some cases related provisions of state law. The complaints allege that the defendant wallboard manufacturers conspired to increase prices through the announcement and implementation of coordinated price increases, output restrictions, and other restraints of trade, including the elimination of individual "job quote" pricing. In addition to American Gypsum, the defendants in these lawsuits include CertainTeed Corp., USG Corporation, New NGC, Inc., Lafarge North America, Temple Inland Inc. and PABCO Building Products LLC. On April 8, 2013, the Judicial Panel on Multidistrict Litigation transferred and consolidated all related cases to the Eastern District of Pennsylvania for coordinated pretrial proceedings.

On June 24, 2013, the direct and indirect purchaser plaintiffs filed consolidated amended class action complaints. The direct purchasers' complaint added the Company as a defendant. The plaintiffs in the consolidated class action lawsuits bring claims on behalf of purported classes of direct or indirect purchasers of wallboard from January 1, 2012 to the present for unspecified monetary damages (including treble damages) and in some cases injunctive relief. On July 29, 2013, the Company and American Gypsum answered the complaints, denying all allegations that they conspired to increase the price of drywall and asserting affirmative defenses to the plaintiffs' claims.

While American Gypsum's production of written discovery is substantially complete, discovery is ongoing. Due to the fact that the case is in the discovery phase, and the plaintiffs have not specified the amount of any damages they are seeking, we are unable to estimate the amount of any reasonably possible loss or range of reasonably possible losses. American Gypsum denies the allegations in these lawsuits and will vigorously defend itself against these claims.

(P) FAIR VALUE OF FINANCIAL INSTRUMENTS

The fair value of our long-term debt has been estimated based upon our current incremental borrowing rates for similar types of borrowing arrangements. The fair value of our Senior Notes at September 30, 2014 is as follows:

	Fair Value (dollars in thousands)
Series 2005A Tranche B	$ 59,070
Series 2005A Tranche C	60,933
Series 2007A Tranche A	9,500
Series 2007A Tranche B	8,560
Series 2007A Tranche C	26,130
Series 2007A Tranche D	40,479

The estimated fair value of our long-term debt was based on quoted prices of similar debt instruments with similar terms that are publicly traded (level 2 input). The carrying values of cash and cash equivalents, accounts and notes receivable, accounts payable and accrued liabilities approximate their fair values at September 30, 2014 due to the short-term maturities of these assets and liabilities. The fair value of our Amended Credit Facility also approximates its carrying value at September 30, 2014.

Item 2. Management's Discussion and Analysis of Results of Operations and Financial Condition

EXECUTIVE SUMMARY

Eagle Materials Inc. is a diversified producer of basic building products used in residential, industrial, commercial and infrastructure construction. Information presented for the six months ended September 30, 2014 and 2013, respectively, reflects the Company's business segments, consisting of Cement, Gypsum Wallboard, Recycled Paperboard, Concrete and Aggregates and Oil and Gas Proppants. These operations are conducted in the U.S. and include the mining of limestone and the manufacture, production, distribution and sale of Portland cement (a basic construction material which is the essential binding ingredient in concrete) as well as specialty oil well cement; the mining of gypsum and the manufacture and sale of gypsum wallboard; the manufacture and sale of recycled paperboard to the gypsum wallboard industry and other paperboard converters; the sale of readymix concrete, the mining and sale of aggregates (crushed stone, sand and gravel) and the mining and sale of sand used in hydraulic fracturing ("frac sand"). These products are used primarily in commercial and residential construction, public construction projects, projects to build, expand and repair roads and highways and in natural gas extraction. Certain information for each of Concrete and Aggregates is broken out separately in the segment discussions. During the quarter ended June 30, 2014, we changed our segments presentation to reflect Oil and Gas Proppants, which had been included in Concrete and Aggregates, as a separate segment. We have adjusted the prior period segment presentation to reflect this change for comparative purposes for both the three and six month periods ended September 30, 2014 and 2013.

During fiscal 2014, we began selling third-party purchased frac sand from our Corpus Christi plant into the Texas market, and we anticipate selling sand from our mine in Utica, Illinois during the latter half of fiscal 2015. We continue to pursue other locations that are geographically supportive of the oil and gas proppants business, and anticipate additional capital expenditures related to this business in the range of $30.0 million to $40.0 million in fiscal 2015. Additionally, we continue to increase our production of specialty oil well cement, which can generate higher profit margins than regular construction cement sales.

We operate in cyclical commodity businesses that are affected by changes in market conditions and the overall construction environment. Our operations, depending on each business segment, range from local in nature to national businesses. We have operations in a variety of geographic markets, which subject us to the economic conditions in those geographic markets as well as economic conditions in the national market. General economic downturns or localized downturns in the regions where we have operations may have a material adverse effect on our business, financial condition and results of operations. Our Cement companies focus on the U.S. heartland in Texas, Oklahoma, Missouri, Colorado, Wyoming and Nevada, as well as the Chicago, Illinois metropolitan area. Due to the low value-to-weight ratio of cement, it is usually shipped within a 150 mile radius of the plants by truck and up to 300 miles by rail. Concrete and Aggregates are even more regional as our operations serve the areas immediately surrounding Austin, Texas, north of Sacramento, California and the greater Kansas City, Missouri area, while frac sand is currently sold in Texas. Cement, concrete and aggregates demand may fluctuate more widely because local and regional markets and economies may be more sensitive to changes than the national markets. Our Wallboard and Paperboard operations are more national in scope and shipments are made throughout most of the continental United States, except for the northeast.

On October 16, 2014, Northern White Sand LLC ("NWS"), a wholly owned subsidiary of the Company, entered into a securities purchase agreement to acquire all of the outstanding equity interest in CRS Holdco LLC, CRS Proppants LLC and Great Northern Sand LLC and related entities (collectively "CRS Proppants") (such acquisition, the "Pending Acquisition"). CRS Proppants is a supplier of frac sand to the energy industry, and its business currently consists of a frac sand mine in New Auburn, Wisconsin, and a transload network into Texas and southwest Oklahoma. CRS Proppants also has multi-year sales contracts with customers for approximately 85% of its current and prospective production volumes.

The purchase price (the "Purchase Price") to be paid by the Company in the Pending Acquisition is approximately $225.0 million, subject to adjustments for working capital and other customary post-closing adjustments, including in-process capital expenditures paid through closing. We expect to fund the payment of the Purchase Price and expenses incurred in connection with the Pending Acquisition through operating cash flow

and borrowings under our bank credit facility, which was amended and restated on October 30, 2014. This transaction is expected to close during our fiscal third quarter. See Footnote (L) to the Unaudited Consolidated Financial Statement for more information about the amended bank credit facility.

We conduct one of our cement operations through a joint venture, Texas Lehigh Cement Company LP, which is located in Buda, Texas (the "Joint Venture"). We own a 50% interest in the Joint Venture and account for our interest under the equity method of accounting. We proportionately consolidate our 50% share of the Joint Venture's revenues and operating earnings in the presentation of our cement segment, which is the way management organizes the segments within the Company for making operating decisions and assessing performance.

RESULTS OF OPERATIONS

Consolidated Results

	For the Three Months Ended September 30,			For the Six Months Ended September 30,		
	2014	2013	Change	2014	2013	Change
	(In thousands except per share)			(In thousands except per share)		
Revenues	$ 284,808	$ 252,646	13%	$ 551,059	$ 479,690	15%
Cost of Goods Sold	(209,747)	(193,167)	9%	(419,597)	(373,607)	12%
Gross Profit	75,061	59,479	26%	131,462	106,083	24%
Equity in Earnings of Unconsolidated Joint Venture	12,051	9,747	24%	21,851	17,625	24%
Corporate General and Administrative	(7,414)	(6,060)	22%	(14,456)	(11,654)	24%
Acquisition and Litigation Expense	(2,103)	-	-	(2,103)	-	-
Other Income	883	317	179%	1,562	900	74%
Interest Expense, net	(3,901)	(4,795)	(19%)	(7,953)	(9,750)	(18%)
Earnings Before Income Taxes	74,577	58,688	27%	130,363	103,204	26%
Income Tax Expense	(24,258)	(18,785)	29%	(42,334)	(33,200)	28%
Net Earnings	$ 50,319	$ 39,903	26%	$ 88,029	$ 70,004	26%
Diluted Earnings per Share	$ 1.00	$ 0.80	25%	$ 1.75	$ 1.40	25%

Revenues. Revenues were $284.8 million and $252.6 million for the three months ended September 30, 2014 and 2013, respectively. The $32.2 million increase in revenues during the three months ended September 30, 2014, as compared to September 30, 2013, was primarily due to increased sales volumes for all of our businesses except aggregates, and increased average net sales prices for all businesses except recycled paperboard. The impact of the increased net sales prices and sales volumes on revenues for the quarter ended September 30, 2014, compared to September 30, 2013, was approximately $18.6 million and $13.6 million, respectively.

Revenues were $551.1 million and $479.7 million for the six months ended September 30, 2014 and 2013, respectively. The $71.4 million increase in revenues during the six months ended September 30, 2014, as compared to September 30, 2013, was primarily due to increased sales volumes for all of our businesses except aggregates, and increased average net sales prices for all of our businesses. The impact of the increased net sales prices and sales volumes on revenues for the six months ended September 30, 2014, compared to September 30, 2013, was approximately $34.5 million and $36.9 million, respectively.

Cost of Goods Sold. Cost of goods sold was $209.7 million and $193.2 million during the three month periods ended September 30, 2014 and 2013, respectively. The $16.5 million increase in cost of goods sold was related primarily to an increase in volumes, which increased cost of sales by approximately $10.5 million, and an increase in operating costs of approximately $6.0 million. The increase in cost of sales due to increased sales volumes was due primarily to the $2.9 million and $7.4 million increase in costs related to increased volumes in our cement and oil and gas proppants businesses, respectively. The increase in operating costs in the second quarter of fiscal 2015, as compared to fiscal 2014, was primarily related to our cement, gypsum wallboard and concrete businesses and was approximately $2.5 million, $3.9 million and $1.8 million, respectively, partially

offset by decreased costs in our paperboard and aggregates businesses or approximately $1.1 million and $1.1 million, respectively.

Cost of goods sold was $419.6 million and $373.6 million during the six month periods ended September 30, 2014 and 2013, respectively. The $46.0 million increase in cost of goods sold was related primarily to an increase in volumes, which increased cost of sales by approximately $29.9 million, and an increase in operating costs of approximately $16.1 million. The increase in cost of sales due to sales volumes is due primarily to the $2.8 million, $6.2 million and $17.7 million increase in costs related to increased volumes in our cement, gypsum wallboard and oil and gas proppants businesses, respectively. The increase in operating costs in the six months ended September 30, 2014, as compared to September 30, 2013, was primarily related to our cement and gypsum wallboard businesses and was approximately $6.5 million and $8.2 million, respectively.

Gross Profit. Gross profit was $75.1 million and $59.5 million during the three months ended September 30, 2014 and 2013, respectively. The 26% increase in gross profit was due primarily to increased average sales prices and increased sales volumes, partially offset by increased cost of goods sold related to the increased sales volumes and operating costs, as noted above. The increase in the gross margin to 26% for the three months ended September 30, 2014, compared to 24% for the three months ended September 30, 2013, was primarily due to increased gross margin in our gypsum wallboard division.

Gross profit was $131.5 million and $106.1 million during the six months ended September 30, 2014 and 2013, respectively. The 24% increase was due primarily to increased average sales prices and increased sales volumes, partially offset by increased cost of goods sold related to the increased sales volumes and operating costs, as noted above. The increase in the gross margin to 24% for the six months ended September 30, 2014, as compared to 22% for the six months ended September 30, 2013, was primarily due to increased gross margin in our gypsum wallboard division.

Equity in Earnings of Joint Venture. Equity in earnings of our unconsolidated joint venture increased $2.3 million, or 24%, for the three months ended September 30, 2014, compared to the similar period in 2013. The increase is primarily due to a 12% increase in sales volumes and a 9% increase in average net sales price. The impact of the increases in sales volumes and average net sales price on equity in earnings of our unconsolidated joint venture during the three months ended September 30, 2014 was approximately $1.2 million and $2.4 million, respectively, partially offset by increased operating costs of sales of approximately $1.3 million. The increase in operating costs was primarily due to an increase in the cost of purchased cement of approximately $0.8 million, and an increase in power cost of approximately $0.2 million.

Equity in earnings of our unconsolidated joint venture increased $4.2 million, or 24%, for the six months ended September 30, 2014, compared to the similar period in 2013. The increase is primarily due to a 10% increase in sales volumes and an 8% increase in average net sales price. The impact of the increases in sales volumes and average net sales price on equity in earnings of our unconsolidated joint venture during the three months ended September 30, 2014 was approximately $1.8 million and $4.2 million, respectively, partially offset by increased operating costs of approximately $1.8 million. The increase in operating costs was primarily due to an increase in the cost of purchased cement of approximately $1.5 million.

Corporate General and Administrative. Corporate general and administrative expenses increased 22% and 24% for the three and six month periods ended September 30, 2014, respectively, compared to the similar periods in 2013. The approximately $1.4 million and $2.8 million increase in corporate general and administrative expenses for the three and six month periods ended September 30, 2014, respectively, compared to 2013, is due primarily to increased long-term incentive compensation expenses. Long-term incentive compensation increased approximately $1.0 million and $2.0 million during the three and six month periods ended September 30, 2014, respectively, compared to similar periods in 2013, primarily due to increased operating earnings.

Acquisition and Litigation Expense. Acquisition and litigation expense consists primarily of approximately $1.7 million of litigation expenses related to our lawsuit against the IRS. As discussed in Footnote (O) to the Unaudited Consolidated Financial Statements, the Company has reached a tentative agreement to settle the lawsuit subject to certain governmental approvals. The remaining expense is due to the Pending Acquisition, which is expected to close during our fiscal third quarter.

Other Income. Other income consists of a variety of items that are non-segment operating in nature and includes non-inventoried aggregates income, gypsum wallboard distribution center income, asset sales and other miscellaneous income and cost items.

Interest Expense, Net. Interest expense, net, decreased approximately $0.9 million and $1.8 million during the three and six months ended September 30, 2014, respectively, compared to the three and six months ended September 30, 2013. The 19% and 18% decrease in interest expense, net for the three and six months ended September 30, 2014, respectively, compared to the similar three and six months in the prior fiscal year, is due primarily to the decrease in interest expense from our Credit Facility, which decreased approximately $0.9 million and $1.8 million in the three and six months ended September 30, 2014, compared to the three and six months ended September 30, 2013. The decrease in interest expense from our Credit Facility is due to reduced outstanding balances during the three and six month periods ended September 30, 2014, as compared to the three and six months ended September 30, 2013, due to repayments made during fiscal 2014 and during the first six months of fiscal 2015. If the Pending Acquisition closes during the next quarter, we expect interest expense to increase during the last six months of fiscal 2015 as compared to the first six months.

Earnings Before Income Taxes. Earnings before income taxes were $74.6 million and $58.7 million during the three months ended September 30, 2014 and 2013, respectively. The $15.9 million increase was primarily due to a $15.6 million increase in gross profit, a $2.3 million increase in equity in earnings of unconsolidated joint venture and a decrease in interest expense, net of $0.8 million, partially offset by an increase of approximately $2.1 million in acquisition and litigation expense and $1.3 million in corporate general and administrative expenses, respectively.

Earnings before income taxes were $130.4 million and $103.2 million during the six month periods ended September 30, 2014 and 2013, respectively. The $27.2 million increase was primarily due to a $25.4 million increase in gross profit, a $4.2 million increase in equity in earnings of unconsolidated joint venture and a decrease in interest expense, net of $1.8 million, partially offset by an increase of approximately $2.1 million in acquisition and litigation expense and $2.8 million in corporate general and administrative expenses, respectively.

Income Taxes. Income tax expense was $42.3 million and $33.2 million for the six months ended September 30, 2014 and 2013, respectively. The estimated effective tax rate for fiscal 2015, as compared to fiscal 2014, remained consistent at 32%.

Net Earnings and Diluted Earnings per Share. Net earnings for the quarter ended September 30, 2014 of $50.3 million increased 25% from last year’s net earnings of $39.9 million; while net earnings of $88.0 million for the six month period ended September 30, 2014 increased 26% from last year’s net earnings of $70.0 million. Diluted earnings per share for the three and six month periods ended September 30, 2014 were $1.00 and $1.75, respectively, compared to $0.80 and $1.40 for the three and six month periods ended September 30, 2013, respectively.

The following table highlights certain operating information related to our five business segments:

	For the Three Months Ended September 30,			For the Six Months Ended September 30,		
	2014	2013	Percentage Change	2014	2013	Percentage Change
	(In thousands except per unit)			(In thousands except per unit)		
Revenues [1]						
Cement [2]	$ 145,861	$ 133,204	10%	$ 273,797	$ 250,904	9%
Gypsum Wallboard	111,655	98,960	13%	224,332	194,941	15%
Recycled Paperboard	35,579	34,642	3%	73,058	66,805	9%
Oil and Gas Proppants	10,414	1,250	733%	21,594	2,192	885%
Concrete and Aggregates	31,961	28,847	11%	58,123	53,111	9%
Gross Revenues	335,470	296,903	13%	650,904	567,953	15%
Less: Intersegment Revenues	(17,523)	(16,879)	4%	(34,128)	(32,481)	5%
Less: Joint Venture Revenues	(33,139)	(27,378)	21%	(65,717)	(55,782)	18%
	$ 284,808	$ 252,646	13%	$ 551,059	$ 479,690	15%
Sales Volume						
Cement (M Tons) [2]	1,476	1,434	3%	2,767	2,675	3%
Gypsum Wallboard (MMSF)	567	554	2%	1,136	1,086	5%
Recycled Paperboard (M Tons)	70	67	4%	142	131	8%
Concrete (M Yards)	286	265	8%	521	492	6%
Aggregates (M Tons)	872	1,006	(13%)	1,690	1,915	(12%)
Average Net Sales Prices [3]						
Cement [2]	$ 90.20	$ 85.34	6%	$ 90.42	$ 85.72	5%
Gypsum Wallboard	160.09	144.05	11%	160.92	145.15	11%
Recycled Paperboard	501.27	507.28	(1%)	505.52	504.92	-
Concrete	86.74	82.15	6%	85.73	80.68	6%
Aggregates	7.82	6.70	17%	7.61	6.79	12%
Operating Earnings						
Cement [2]	$ 38,450	$ 32,430	19%	$ 58,957	$ 51,440	15%
Gypsum Wallboard	37,002	29,868	24%	74,430	59,504	25%
Recycled Paperboard	7,984	6,937	15%	15,531	12,616	23%
Oil and Gas Proppants	711	(951)	-	74	(1,806)	-
Concrete and Aggregates	2,965	942	215%	4,321	1,954	121%
Other, net	883	317	179%	1,562	900	74%
Net Operating Earnings	$ 87,995	$ 69,543	27%	$ 154,875	$ 124,608	24%

(1) Gross revenue, before freight and delivery costs.
(2) Includes proportionate share of our Joint Venture.
(3) Net of freight and delivery costs.

Cement Operations. Cement revenues were $145.9 million for the three months ended September 30, 2014, which is a 10% increase over revenues of $133.2 million for the three months ended September 30, 2013. The increase in revenues during the three months ended September 30, 2014, as compared to the similar period in 2013, is primarily due to a 6% increase in average net sales price, as well as a 3% increase in sales volume. The increase in average net sales price and sales volume positively impacted revenues by approximately $8.4 million and $4.3 million, respectively, for the three months ended September 30, 2014, compared to the three months ended September 30, 2013.

Operating earnings for the Cement business increased 19% to $38.5 million from $32.4 million for the second quarter of fiscal 2015 and 2014, respectively. The increase in operating earnings was due primarily to increased average sales prices and sales volumes, which positively impacted operating earnings by $8.4 million and $1.4 million, respectively, partially offset by increased operating costs of $3.8 million. The increase in operating costs in the second quarter of fiscal 2015, compared to the second quarter of fiscal 2014, is primarily related to increased purchased cement, power and other raw material costs, which adversely impacted operating earnings by approximately $1.3 million, $0.7 million and $1.3 million, respectively. The operating margin

increased to 26% for the second quarter of fiscal 2015, as compared to 24% for the second quarter of fiscal 2014, primarily due to increased sales prices, partially offset by increased operating costs.

Cement revenues were $273.8 million for the six months ended September 30, 2014, which is a 9% increase over revenues of $250.9 million for the six months ended September 30, 2013. The increase in revenues during the six months ended September 30, 2014, compared to the similar period in 2013, is primarily due to a 5% increase in average net sales price, as well as a 3% increase in sales volume. The increase in average net sales price and sales volume positively impacted revenues by approximately $13.4 million and $9.5 million, respectively, for the six months ended September 30, 2014, compared to the six months ended September 30, 2013.

Operating earnings for the Cement business increased 15% to $59.0 million from $51.4 million for the six months ended September 30, 2014 and 2013, respectively. The increase in operating earnings was due primarily to increased average sales prices and average sales volumes, which positively impacted operating earnings by $13.4 million and $2.4 million, respectively, partially offset by increased operating costs of $8.2 million. The increase in operating costs during the six months ended September 30, 2014, compared to the six months ended September 30, 2013, is primarily related to increased maintenance, purchased cement and power costs, which adversely impacted operating earnings by approximately $3.8 million, $2.5 million and $1.8 million, respectively, partially offset by lower fuel costs of approximately $1.6 million. The operating margin increased to 22% for the six months ended September 30, 2014, compared to 21% for the six months ended September 30, 2013, primarily due to increased sales prices, partially offset by increased operating costs.

Gypsum Wallboard Operations. Sales revenues increased 13% to $111.7 million in the second quarter of fiscal 2015, from $99.0 million in the second quarter of fiscal 2014, primarily due to an 11% increase in our average net sales price and a 2% increase in sales volumes. The increase in our average net sales price and sales volumes positively impacted revenues by approximately $10.4 million and $2.3 million, respectively. The increase in our average net sales price was due to the implementation of our price increase in January 2014. The increased sales volumes are primarily due to increased construction activity in fiscal 2015, compared to fiscal 2014. Our market share was essentially unchanged during the three months ended September 30, 2014, compared to the three months ended September 30, 2013.

Operating earnings increased to $37.0 million for the three months ended September 30, 2014, compared to $29.9 million for the three months ended September 30, 2013, primarily due to the increase in our average net sales price and sales volumes, which positively impacted operating earnings by approximately $10.4 million and $0.6 million, respectively, partially offset by increased operating costs of $3.9 million. The increase in operating costs during the three months ended September 30, 2014, compared to the three months ended September 30, 2013, was primarily due to increased freight, maintenance, other raw materials and natural gas costs, which negatively impacted operating earnings by $1.2 million, $0.8 million, $0.4 million and $0.5 million, respectively. The increase in our average net sales price is the primary reason our operating margin increased to 33% for the three months ended September 30, 2014, compared to 30% for the three months ended September 30, 2013. Fixed costs are not a significant part of the overall cost of wallboard; therefore, changes in utilization have a relatively minor impact on our operating cost per unit.

Sales revenues increased 15% to $224.3 million for the six months ended September 30, 2014, from $195.0 million for the six months ended September 30, 2013, primarily due to an 11% increase in our average net sales price and a 5% increase in sales volumes. The increase in our average net sales price and sales volumes positively impacted revenues by approximately $20.4 million and $8.9 million, respectively. The increase in our average net sales price was due to the implementation of our price increase in January 2014. The increased sales volumes are primarily due to increased construction activity in fiscal 2015, compared to fiscal 2014. Our market share was essentially unchanged during the six months ended September 30, 2014, compared to the six months ended September 30, 2013.

Operating earnings increased to $74.4 million for the six months ended September 30, 2014, compared to $59.5 million for the six months ended September 30, 2013, primarily due to the increase in average net sales price and sales volumes, which positively impacted operating earnings by approximately $20.4 million and $2.7 million, respectively, partially offset by increased operating costs of $8.2 million. The increase in operating costs during the six months ended September 30, 2014, compared to the six months ended September 30, 2013, was primarily due to increased freight, maintenance, other raw materials and natural gas costs, which negatively impacted operating earnings by $2.5 million, $1.6 million, $0.9 million and $1.1 million, respectively. The increase in our average net sales price is the primary reason our operating margin increased to 33% for the six months ended September 30, 2014, compared to 31% for the six months ended September 30, 2013. Fixed costs are not a significant part of the overall cost of wallboard; therefore, changes in utilization have a relatively minor impact on our operating cost per unit.

Recycled Paperboard Operations. Revenues increased 3% to $35.6 million during the three months ended September 30, 2014, compared to $34.6 million for the three months ended September 30, 2013. The increase in revenues was due primarily to the 4% increase in sales volumes, which positively impacted revenue by $1.5 million, partially offset by a decline in average net sales prices which adversely impacted revenue by approximately $0.5 million.

Operating earnings increased to $8.0 million for the second quarter of fiscal 2015, compared to $6.9 million for the second quarter of fiscal 2014. The increase in operating earnings is primarily due to increased sales volumes and decreased operating costs, which positively impacted operating earnings by approximately $0.5 million and $1.1 million, respectively, partially offset by decreased average net sales prices, which adversely impacted operating earnings by approximately $0.5 million. The decrease in operating costs is primarily related to lower recycled fiber costs, which positively impacted operating earnings by approximately $1.5 million, partially offset by increased maintenance costs of approximately $0.5 million. The decrease in operating costs was the primary reason operating margin increased to 22% during the second quarter of fiscal 2015, compared to 20% during the second quarter of fiscal 2014.

Revenues increased 9% to $73.1 million for the six months ended September 30, 2014, from $66.8 million for six months ended September 30, 2013. The increase in revenue during the six months ended September 30, 2014, compared to the six months ended September 30, 2013, is due to the increase in sales volumes and slight increase in average net sales price, which positively impacted revenues by approximately $5.6 million and $0.7 million, respectively.

Operating earnings increased to $15.5 million for the six months ended September 30, 2014, compared to $12.6 million for the six months ended September 30, 2013. The increase in operating earnings is primarily due to increased sales volumes, average net sales prices and decreased operating costs, which positively impacted operating earnings by approximately $1.3 million, $0.7 million and $0.9 million, respectively. The decrease in operating costs is primarily related to lower recycled fiber costs, which positively impacted operating earnings by approximately $1.5 million, partially offset by increased natural gas and maintenance costs of approximately $0.2 million and $0.3 million, respectively. The increase in sales volumes and average net sales price, together with reduced operating expenses were the primary reasons operating margin increased to 21% during the six months ended September 30, 2014, compared to 19% during the six months ended September 30, 2013.

Concrete and Aggregates Operations. Concrete and aggregates revenues increased 11% to $32.0 million for the three months ended September 30, 2014, compared to $28.8 million for the three months ended September 30, 2013. The primary reason for the increase in revenue for the second quarter of fiscal 2015, compared to the second quarter of fiscal 2014, was the 6% and 17% increase in average net sales prices for concrete and aggregates, respectively, and the 8% increase in sales volumes for concrete, which positively impacted revenues by approximately $2.3 million and $1.8 million, respectively. These increases were partially offset by a decrease in sales volumes for our aggregates business, which negatively impacted revenues by approximately $0.9 million during the three months ended September 30, 2014, compared to the three months ended September 30, 2013.

Operating earnings increased to approximately $3.0 million for the three months ended September 30, 2014, compared to $0.9 million for the three months ended September 30, 2013. Operating earnings were positively impacted by increased average net sales prices and sales volumes, which positively impacted operating earnings by approximately $2.3 million and $0.5 million, respectively, partially offset by increased operating costs of approximately $0.7 million during the three months ended September 30, 2014, compared to the three months ended September 30, 2013. Increased operating costs during the three months ended September 30, 2014, compared to the three months ended September 30, 2013, were primarily related to royalties, purchased materials, and maintenance, which increased operating costs by approximately $0.3 million, $0.2 million, and $0.1 million, respectively.

Concrete and aggregates revenues increased 9% to $58.1 million for the six months ended September 30, 2014, compared to $53.1 million for the six months ended September 30, 2013. The primary reason for the increase in revenue for the six months ended September 30, 2014, compared to the six months ended September 30, 2013, was the 6% and 7% increase in average net sales prices for concrete and aggregates, respectively, and the 6% increase in sales volumes for concrete, which positively impacted revenues by approximately $4.1 million and $2.3 million, respectively. These increases were partially offset by a decrease in sales volumes for our aggregates business, which negatively impacted revenues by approximately $1.2 million during the six months ended September 30, 2014, compared to the six months ended September 30, 2013.

Operating earnings increased to approximately $4.3 million for the six months ended September 30, 2014, compared to $2.0 million for the six months ended September 30, 2013. Operating earnings were positively impacted by increased average net sales prices and sales volumes, which positively impacted operating earnings by approximately $4.1 million and $0.6 million, respectively, partially offset by increased operating costs of approximately $2.2 million during the six months ended September 30, 2014, compared to the six months ended September 30, 2013. Increased operating costs during the six months ended September 30, 2014, compared to the six months ended September 30, 2013, were primarily related to purchased materials, maintenance and delivery, which increased operating costs by approximately $1.2 million, $0.4 million, and $0.3 million, respectively.

Oil and Gas Proppants. Revenues for our oil and gas proppants segment increased to approximately $10.4 million during the three months ended September 30, 2014, compared to $1.3 million during the three months ended September 30, 2013. This segment is still in the start-up phase, and the increase in revenues during the three months ended September 30, 2014, compared to September 30, 2013, reflects sales volume growth at our Corpus Christi, Texas location.

Operating earnings for the three months ended September 30, 2014 were approximately $0.7 million, which improved from an operating loss of approximately $0.8 million during the three months ended September 30, 2013. The increase in operating earnings is due primarily to the increase in sales volumes during the three months ended September 30, 2014, compared to the three months ended September 30, 2013. This segment is still in the start-up phase, and we continue to sell purchased sand out of our Corpus Christi, Texas facility. We expect to be able to sell our mined sand from the Corpus Christi facility during our fiscal third quarter.

Revenues for our oil and gas proppants segment increased to approximately $21.6 million during the six months ended September 30, 2014, compared to $2.2 million during the six months ended September 30, 2013. This segment is still in the start-up phase, and the increase in revenues during the six months ended September 30, 2014, compared to September 30, 2013, reflects sales volume growth at our Corpus Christi, Texas location.

Operating earnings for the six months ended September 30, 2014 were approximately $0.1 million, which improved from an operating loss of approximately $1.6 million during the six months ended September 30, 2013. The increase in operating earnings is due primarily to the increase in sales volumes during the six months ended September 30, 2014, compared to the six months ended September 30, 2013. This segment is still in the start-up phase, and we continue to sell purchased sand out of our Corpus Christi, Texas facility. We expect to be able to sell our mined sand from the Corpus Christi facility during our fiscal third quarter.

GENERAL OUTLOOK

The drivers of construction products demand continue to improve incrementally, reinforcing the notion that a cyclic recovery is underway. The pace of recovery continues to hinge on the pace of growth in the U.S. economy. Our cement sales network stretches across the central U.S., both east to west and north to south. While we anticipate cement consumption to continue to increase throughout calendar 2014 and into calendar 2015, each region will increase at a different pace. Cement markets are affected by infrastructure spending, industrial construction and residential building activity. We expect improvement to vary in each of our cement markets.

We do not necessarily anticipate significant increases in concrete and aggregate sales volumes in northern California. We are experiencing a recovery in both volume and price in our Austin, Texas markets, and expect volumes to continue to increase throughout fiscal 2015. Demand improved in the greater Kansas City area during fiscal 2014, and we expect demand to continue to improve in this area during fiscal 2015.

Wallboard demand is heavily influenced by new residential housing construction as well as repair and remodeling. Most forecasts point to a continued pick-up in demand in both of these areas throughout calendar 2014 and into 2015. Industry shipments of gypsum wallboard exceeded 20 billion square feet in calendar 2013, and are expected to increase in calendar 2014. No new plants are expected to be added in fiscal 2015, but it is possible that previously idled plants or curtailed lines could be brought back into service. We implemented a wallboard price increase effective January 2014 and recently announced a 15% price increase effective in January 2015.

Increased demand for gypsum wallboard will positively impact our recycled paperboard business as sales of higher priced gypsum paper are expected to continue to increase during fiscal 2015, as compared to fiscal 2014, both in gross tons and as a percentage of total sales volumes.

We began operations in our new frac sand business during the first quarter of fiscal 2014. The outlook for frac sand proppants in the oil and gas industry remains robust. Between the opening of our mine in Illinois, and the Pending Acquisition, we expect increased sales volumes during the remainder of fiscal 2015. The Pending Acquisition will increase our mining and processing ability, as well as provide trans-load facilities, expanding our market reach.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to adopt accounting policies and make significant judgments and estimates to develop amounts reflected and disclosed in the financial statements. In many cases, there are alternative policies or estimation techniques that could be used. We maintain a thorough process to review the application of our accounting policies and to evaluate the appropriateness of the many estimates that are required to prepare our financial statements. However, even under optimal circumstances, estimates routinely require adjustment based on changing circumstances and the receipt of new or better information.

Information regarding our “Critical Accounting Policies and Estimates” can be found in our Annual Report. The five critical accounting policies that we believe either require the use of the most judgment, or the selection or application of alternative accounting policies, and are material to our financial statements, are those relating to long-lived assets, goodwill, environmental liabilities, accounts receivable and income taxes. Management has discussed the development and selection of these critical accounting policies and estimates with the Audit Committee of our Board of Directors and with our independent registered public accounting firm. In addition, Note (A) to the financial statements in our Annual Report contains a summary of our significant accounting policies.

Recent Accounting Pronouncements

Refer to Note (A) in the Notes to Consolidated Financial Statements of the Form 10-Q for information regarding recently issued accounting pronouncements that may affect our financial statements.

LIQUIDITY AND CAPITAL RESOURCES

Cash Flow.

The following table provides a summary of our cash flows:

	For the Six Months Ended September 30,	
	2014	2013
	(dollars in thousands)	
Net Cash Provided by Operating Activities	$ 117,651	$ 79,255
Investing Activities:		
Capital Expenditures	(40,039)	(31,583)
Net Cash Used in Investing Activities	(40,039)	(31,583)
Financing Activities:		
Excess Tax Benefits from Share Based Payment Arrangements	3,195	1,053
Decrease in Long-Term Debt	(69,000)	(34,000)
Dividends Paid	(10,019)	(9,910)
Shares Repurchased to Settle Employee Taxes on RSUs	(1,299)	(435)
Proceeds from Stock Option Exercises	4,092	2,351
Net Cash Provided by Financing Activities	(73,031)	(40,941)
Net Increase in Cash	$ 4,581	$ 6,731

Cash flows from operating activities increased $38.4 million to $117.7 million during the six month period ended September 30, 2014, compared to $79.3 million during the similar period in 2013. This increase was largely attributable to increased net earnings of approximately $18.0 million and reduced growth in working capital, which increased approximately $2.6 million during the six months ended September 30, 2014, compared to approximately $28.4 million during the six months ended September 30, 2013. Cash flows from operations were negatively impacted during the six months ended September 30, 2014 by increases in accounts and notes receivable, and inventories of approximately $29.8 million and $3.6 million, respectively, partially offset by increases in accounts payable and accrued liabilities, other assets and income taxes payable of approximately $16.9 million, $2.8 million and $11.1 million, respectively. During the six months ended September 30, 2013, cash flows from operations were negatively impacted by increases in accounts and notes receivable, and inventories of approximately $30.1 million and $7.7 million, respectively, and a decrease in accounts payable and accrued liabilities of approximately $2.9 million, partially offset by an increase of approximately $13.5 million in income taxes payable.

Working capital increased to $208.0 million at September 30, 2014, compared to $198.1 million at March 31, 2014, primarily due to increased accounts and notes receivable and inventories of approximately $29.9 million and $3.6 million, respectively, partially offset by decreased prepaid assets of approximately $4.2 million and increased accounts payable, accrued liabilities and income taxes payable of approximately $9.9 million, $6.3 million and $7.9 million, respectively.

The increase in accounts and notes receivable at September 30, 2014, compared to March 31, 2014, is primarily due to increased revenues during the three months ended September 30, 2014, compared to the three months ended March 31, 2014. As a percentage of quarterly sales generated in the quarter then ended, accounts receivable were approximately 47% at September 30, 2014 and 51% at March 31, 2014. Management measures the change in accounts receivable by monitoring the days sales outstanding on a monthly basis to determine if any deterioration has occurred in the collectability of the accounts receivable. No significant deterioration in the collectability of our accounts receivable was identified at September 30, 2014. Notes receivable are monitored on an individual basis, and no significant deterioration in the collectability of notes receivable was identified at September 30, 2014.

Our inventory balance at September 30, 2014 increased approximately 2% from the inventory balance at March 31, 2014. This increase is due primarily to an increase in raw materials and materials in progress of approximately $9.0 million, partially offset by a decline in finished cement. The increase in raw materials and materials in process is primarily due to the increase in sand inventory related to our oil and gas proppants business, which is due to the continued growth of the business. The decline in finished cement is consistent with our business cycle as we generally build inventory over the winter to meet the demand in the spring and summer. The largest individual balance in our inventory is our repair parts. These parts are necessary given the size and complexity of our manufacturing plants, as well as the age of certain of our plants, which creates the need to stock a high level of repair parts inventory. We believe all of these repair parts are necessary and we perform semi-annual analyses to identify obsolete parts. We have less than one year's sales of all product inventories, and our inventories have a low risk of obsolescence due to our products being basic construction materials.

In June 2010, we received a Notice of Deficiency ("Notice") of $71.5 million of taxes and penalties for the fiscal years ended March 31, 2001 through 2006, inclusive, related to the IRS audit of the Republic Asset Acquisition. The final amount related to the Notice, including interest, was approximately $97.9 million, which we paid to the IRS. Refund claims were filed with the IRS in October 2010 to recover all $97.9 million paid to the IRS, plus interest thereon. The IRS denied our refund request and we filed a lawsuit in May 2011 in Federal District Court to recover the requested refunds.

With respect to the tax returns for the fiscal years ended March 31, 2007 through March 31, 2010, the IRS issued an assessment of approximately $8.1 million of income tax and approximately $1.9 million in penalties. In addition, we estimate that interest of approximately $2.9 million has accrued on these amounts as of September 30, 2014. These amounts have been fully accrued in our financial statements at September 30, 2014. The amounts accrued have been treated as unrecognized tax liabilities and are included in Other Long Term Liabilities on our Consolidated Balance Sheet at September 30, 2014 and March 31, 2014. We have reached a tentative agreement with the IRS to settle this lawsuit subject to governmental approval. See Note (O) of the Notes to Unaudited Consolidated Financial Statements for more information.

Net cash used in investing activities during the six month period ended September 30, 2014 was approximately $40.0 million, compared to net cash used in investing activities of approximately $31.6 million during the similar period in 2013, an increase of $8.4 million. The increase in capital expenditure is primarily related to increased expenditures in our cement and concrete and aggregates businesses, partially offset by reduced capital spending in our oil and gas proppants business. We anticipate spending between $20.0 million and $25.0 million on sustaining capital expenditures for all of our businesses during fiscal 2015, which is consistent with historic levels.

Net cash used in financing activities increased to approximately $73.0 million during the six month period ended September 30, 2014, compared to net cash used of approximately $40.9 million during the similar period in 2013. This $32.1 million increase in net cash used in financing activities is primarily due to the increase in net repayments of debt to $69.0 million during the six month period ended September 30, 2014 from net repayments of $34.0 million during the six month period ended September 30, 2013. The increase in debt repayments is due primarily to the increase in net cash provided by operating activities. Our debt-to-capitalization ratio and net-debt-to-capitalization ratio improved to 25.3% and 24.6%, respectively, at September 30, 2014, as compared to 31.4% and 31.1%, respectively, at March 31, 2014.

On October 16, 2014 we announced the acquisition of CRS Proppants. The Purchase Price to be paid by the Company in the Pending Acquisition is approximately $225.0 million subject to adjustments for working capital and other customary post-closing adjustments, including in-process capital expenditures paid through closing. We expect to fund the payment of the Purchase Price and expenses incurred in the Pending Acquisition though operating cash flows and borrowings under our Bank Credit Facility, which was amended and restated on October 30, 2014.

Debt Financing Activities.

Bank Credit Facility

The Credit Facility was amended and restated on October 30, 2014 (the "Amended Credit Facility"). The Amended Credit Facility increased available borrowings from $400.0 million to $500.0 million and extended the term to October 30, 2019. Borrowings under the Amended Credit Facility are guaranteed by substantially all of the Company's subsidiaries. At the option of the Company, outstanding principal amounts on the Amended Credit Facility bear interest at a variable rate equal to (i) LIBOR, plus an agreed margin (ranging from 100 to 225 basis points), which is to be established quarterly based upon the Company's ratio of consolidated EBITDA, defined as earnings before interest, taxes, depreciation and amortization, to the Company's consolidated indebtedness (the "Leverage Ratio"), or (ii) an alternative base rate which is the higher of (a) the prime rate or (b) the federal funds rate plus ½% per annum plus an agreed margin (ranging from 0 to 125 basis points). Interest payments are payable, in the case of loans bearing interest at a rate based on the federal funds rate, quarterly, or in the case of loans bearing interest at a rate based on LIBOR, at the end of the LIBOR advance periods, which can be up to a period of six months at the option of the Company. The Company is also required to pay a commitment fee on unused available borrowings under the Amended Credit Facility ranging from 10 to 35 basis points depending upon the Leverage Ratio. The Amended Credit Facility contains customary covenants that restrict our ability to incur additional debt, encumber our assets, sell assets, make or enter into certain investments, loans or guaranties and enter into sale and leaseback arrangements. The Amended Credit Facility also requires us to maintain a consolidated indebtedness ratio (calculated as consolidated indebtedness to consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions) of 3.5:1.0 or less and an interest coverage ratio (consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions to consolidated interest expense) of at least 2.5:1.0. We had $120.0 million of borrowings outstanding at September 30, 2014. Based on our Leverage Ratio, we had $272.4 million of available borrowings, net of the outstanding letters of credit, at September 30, 2014.

The Amended Credit Facility has a $50.0 million letter of credit facility. Under the letter of credit facility, the Company pays a fee at a per annum rate equal to the applicable margin for Eurodollar loans in effect from time to time plus a one-time letter of credit fee in an amount equal to 0.125% of the initial stated amount. At September 30, 2014, we had $7.6 million of letters of credit outstanding.

Senior Notes - We entered into a Note Purchase Agreement on November 15, 2005 (the "2005 Note Purchase Agreement") related to our sale of $200 million of senior, unsecured notes, designated as Series 2005A Senior Notes (the "Series 2005A Senior Notes") in a private placement transaction. The Series 2005A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in three tranches on November 15, 2005. Since entering into the 2005 Note Purchase Agreement, we have repurchased $81.1 million in principal of the Series 2005A Senior Notes (in periods prior to the fiscal year ended March 31, 2013). During November 2012, Tranche A of the Series 2005A Senior Notes matured and we retired the remaining $4.7 million in notes from this Tranche. Following these repurchases and maturities, the amounts outstanding for each of the remaining tranches are as follows:

	Principal	Maturity Date	Interest Rate
Tranche B	$ 57.0 million	November 15, 2015	5.38%
Tranche C	$ 57.2 million	November 15, 2017	5.48%

Interest for each tranche of Notes is payable semi-annually on the 15th day of May and the 15th day of November of each year until all principal is paid for the respective tranche.

We also entered into an additional Note Purchase Agreement on October 2, 2007 (the "2007 Note Purchase Agreement") related to our sale of $200 million of senior, unsecured notes, designated as Series 2007A Senior Notes (the "Series 2007A Senior Notes") in a private placement transaction. The Series 2007A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in four tranches on October 2, 2007. Since entering into the 2007 Note Purchase Agreement, we have repurchased $122.0 million in

principal of the Series 2007A Senior Notes (in periods prior to the fiscal year ended March 31, 2013). Following the repurchase, the amounts outstanding for each of the four tranches are as follows:

	Principal	Maturity Date	Interest Rate
Tranche A	$ 9.5 million	October 2, 2014	6.08%
Tranche B	$ 8.0 million	October 2, 2016	6.27%
Tranche C	$ 24.0 million	October 2, 2017	6.36%
Tranche D	$ 36.5 million	October 2, 2019	6.48%

Interest for each tranche of Notes is payable semi-annually on the second day of April and the second day of October of each year until all principal is paid for the respective tranche.

On October 2, 2014 we repaid the $9.5 million outstanding under Tranche A of the Series 2007Senior Notes.

Our obligations under the 2005 Note Purchase Agreement and the 2007 Note Purchase Agreement (collectively referred to as the “Note Purchase Agreements”) and the Series 2005A Senior Notes and the Series 2007A Senior Notes (collectively referred to as “the Senior Notes”) are equal in right of payment with all other senior, unsecured debt of the Company, including our debt under the Amended Credit Facility. The Note Purchase Agreements contain customary restrictive covenants, including covenants that place limits on our ability to encumber our assets, to incur additional debt, to sell assets, or to merge or consolidate with third parties, as well as certain cross covenants with the Amended Credit Facility. We were in compliance with all financial ratios and tests at June 30, 2014 and throughout the fiscal year.

Pursuant to a Subsidiary Guaranty Agreement, substantially all of our subsidiaries have guaranteed the punctual payment of all principal, interest, and Make-Whole Amounts (as defined in the Note Purchase Agreements) on the Senior Notes and the other payment and performance obligations of the Company contained in the Senior Notes and in the Note Purchase Agreements. We are permitted, at our option and without penalty, to prepay from time to time at least 10% of the original aggregate principal amount of the Senior Notes at 100% of the principal amount to be prepaid, together with interest accrued on such amount to be prepaid to the date of payment, plus a Make-Whole Amount. The Make-Whole Amount is computed by discounting the remaining scheduled payments of interest and principal of the Senior Notes being prepaid at a discount rate equal to the sum of 50 basis points and the yield to maturity of U.S. treasury securities having a maturity equal to the remaining average life of the Senior Notes being prepaid.

We are leasing one of our cement plants from the city of Sugar Creek, Missouri. The city of Sugar Creek issued industrial revenue bonds to partly finance improvements to the cement plant. The lease payments due to the city of Sugar Creek under the cement plant lease, which was entered into upon the sale of the industrial revenue bonds, are equal in amount to the payments required to be made by the city of Sugar Creek to the holders of the industrial revenue bonds. Because we are the holder of all of the outstanding industrial revenue bonds, no debt is reflected on our financial statements in connection with our lease of the cement plant. At the conclusion of the lease in fiscal 2021, we have the option to purchase the cement plant for a nominal amount.

Other than the Amended Credit Facility, we have no other source of committed external financing in place. In the event the Amended Credit Facility should be terminated, no assurance can be given as to our ability to secure a new source of financing. Consequently, if any balance were outstanding on the Amended Credit Facility at the time of termination, and an alternative source of financing could not be secured; it would have a material adverse impact on us. None of our debt is rated by the rating agencies.

We do not have any off balance sheet debt, except for approximately $15.0 million of operating leases, which have an average remaining term of approximately fifteen years. Also, we have no outstanding debt guarantees. We have available under the Amended Credit Facility a $50.0 million Letter of Credit Facility. At September 30, 2014, we had $7.6 million of letters of credit outstanding that renew annually. We are contingently liable for performance under $16.3 million in performance bonds relating primarily to our mining operations.

We believe that our cash flow from operations and available borrowings under our Credit Facility should be sufficient to meet our currently anticipated operating needs, capital expenditures and dividend and debt service requirements for at least the next twelve months. However, our future liquidity and capital requirements may vary depending on a number of factors, including market conditions in the construction industry, our ability to maintain compliance with covenants in our Credit Facility, the level of competition and general and economic factors beyond our control. These and other developments could reduce our cash flow or require that we seek additional sources of funding. We cannot predict what effect these factors will have on our future liquidity.

Share Repurchases.

We did not repurchase any of our shares on the open market during the six month period ended September 30, 2014. As of September 30, 2014, we had a remaining authorization to purchase 717,300 shares. Share repurchases may be made from time-to-time in the open market or in privately negotiated transactions. The timing and amount of any repurchases of shares will be determined by management, based on its evaluation of market and economic conditions and other factors.

During the six month period ended September 30, 2014, 20,074 shares of stock were withheld from employees upon the vesting of Restricted Shares that were granted under the Plan. These shares were withheld by us to satisfy the employees' minimum statutory tax withholding, which is required once the Restricted Shares or Restricted Shares Units are vested.

Dividends.

Dividends paid were $10.0 million and $9.9 million for the six month periods ended September 30, 2014 and 2013, respectively. Each quarterly dividend payment is subject to review and approval by our Board of Directors, who will continue to evaluate our dividend payment amount on a quarterly basis.

Capital Expenditures.

The following table compares capital expenditures:

	For the Six Months Ended September 30,	
	2014	2013
	(dollars in thousands)	
Land and Quarries	$ 2,610	$ 6,014
Plants	26,554	20,572
Buildings, Machinery and Equipment	10,875	4,997
Total Capital Expenditures	$ 40,039	$ 31,583

Historically, annual maintenance capital expenditures have been approximately $20.0 to $25.0 million, which we anticipate will be similar for fiscal 2015. Total capital expenditures for fiscal 2015, including sustaining capital expenditures, are expected to be approximately $50.0 million to $70.0 million. Historically, we have financed such expenditures with cash from operations and borrowings under our revolving credit facility.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks related to fluctuations in interest rates on our Credit Facility. From time-to-time we have utilized derivative instruments, including interest rate swaps, in conjunction with our overall strategy to manage the debt outstanding that is subject to changes in interest rates. We have a $400.0 million Credit Facility available at September 30, 2014, under which borrowings bear interest at a variable rate. A hypothetical 100 basis point increase in interest rates on the $120.0 million of borrowings at September 30, 2014 would increase our interest expense by approximately $1.2 million on an annual basis. At present, we do not utilize derivative financial instruments.

We are subject to commodity risk with respect to price changes principally in coal, coke, natural gas and power. We attempt to limit our exposure to changes in commodity prices by entering into contracts or increasing use of alternative fuels.

Item 4. Controls and Procedures

We have established a system of disclosure controls and procedures that are designed to ensure that information relating to the Company, which is required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 (“Exchange Act”), is recorded, processed, summarized and reported within the time periods specified by the SEC’s rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, in a timely fashion. An evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) was performed as of the end of the period covered by this quarterly report. This evaluation was performed under the supervision and with the participation of management, including our CEO and CFO. Based upon that evaluation, our CEO and CFO have concluded that these disclosure controls and procedures were effective.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Outstanding Lawsuit against the IRS

As previously reported, the Internal Revenue Service (the "IRS") completed the examination of our federal income tax returns for all of the fiscal years ended March 31, 2001 through 2006. The IRS issued Exam Reports and Notices of Proposed Adjustment on November 9, 2007 for the examination of the 2001, 2002 and 2003 tax years, and on February 5, 2010 for the examination of the 2004, 2005 and 2006 fiscal years, in which it denied certain depreciation deductions claimed by us with respect to assets acquired by us from Republic Group LLC in November 2000. In response to the examination reports, we previously paid an aggregate amount to the IRS, net of certain refunds of interest, of $97.9 million of taxes, penalties and interest with respect to these fiscal years. On May 4, 2011, we filed a lawsuit in Federal District Court to recover the $97.9 million of taxes, penalties and interest paid. In March 2013, the IRS agreed to suspend the audit for tax years 2007 through 2011 pending the outcome of our case before the Federal District Court. In September 2013, the judge heard arguments on each party's motion for summary judgment and in November 2013 the judge denied each such motion.

In September 2014 the Company and the IRS reached a tentative agreement to settle this case. The tentative settlement is subject to various governmental approvals. If the tentative agreement is approved, we will dismiss our lawsuit seeking to recover taxes, interest and penalties paid, as discussed above, in exchange for the IRS conceding 40% of the penalties, plus related interest, to date. If the settlement is not approved, we will continue to pursue our claims in court. In the event the settlement is approved, we will recognize the recovery of 40% of the penalties, which total approximately $5.8 million, plus the related interest thereon, in our consolidated statement of earnings during the period in which the settlement is finalized.

EPA Notice of Violation

On October 5, 2010, Region IX of the EPA issued a Notice of Violation and Finding of Violation ("NOV") alleging violations by our subsidiary, Nevada Cement Company ("NCC"), of the Clean Air Act ("CAA"). The NOV alleges that NCC made certain physical changes to its facility in the 1990s without first obtaining permits required by the Prevention of Significant Deterioration requirements and Title V permit requirements of the CAA. The EPA also alleges that NCC has failed to submit to EPA since 2002 certain reports required by the National Emissions Standard for Hazardous Air Pollutants General Provisions and the Portland Cement Manufacturing Industry Standards. On March 12, 2014, EPA Region IX issued a second NOV to NCC. The second NOV is materially similar to the 2010 NOV except that it alleges violations of the new source performance standards ("NSPS") for Portland cement plants. The NOVs state that the EPA may seek penalties although it does not propose or assess any specific level of penalties or specify what relief the EPA will seek for the alleged violations. NCC believes it has meritorious defenses to the allegations in the NOVs. NCC met with the EPA in December 2010, September 2012 and May 2014 to present its defenses and to discuss a resolution of the alleged violations. EPA and NCC remain in discussions regarding the alleged violations. If a negotiated settlement cannot be reached, NCC intends to vigorously defend these matters in any enforcement action that may be pursued by the EPA. As a part of a settlement, or should NCC fail in its defense in any enforcement action, NCC could be required to make substantial capital expenditures to modify its facility and incur increased operating costs. NCC could also be required to pay significant civil penalties. Additionally, an enforcement action could take many years to resolve the underlying issues alleged in the NOV. We are currently unable to determine the final outcome of this matter or the impact of an unfavorable determination upon our financial position or results of operations.

Domestic Wallboard Antitrust Litigation

Since late December 2012, several purported class action lawsuits were filed in various United States district courts, including the Eastern District of Pennsylvania, Western District of North Carolina and the Northern District of Illinois, against the Company's subsidiary, American Gypsum Company LLC ("American Gypsum"), alleging that American Gypsum conspired with other wallboard manufacturers to fix the price for drywall sold in the United States in violation of federal antitrust laws and, in some cases related provisions of state law. The

complaints allege that the defendant wallboard manufacturers conspired to increase prices through the announcement and implementation of coordinated price increases, output restrictions, and other restraints of trade, including the elimination of individual "job quote" pricing. In addition to American Gypsum, the defendants in these lawsuits include CertainTeed Corp., USG Corporation, New NGC, Inc., Lafarge North America, Temple Inland Inc. and PABCO Building Products LLC. On April 8, 2013, the Judicial Panel on Multidistrict Litigation transferred and consolidated all related cases to the Eastern District of Pennsylvania for coordinated pretrial proceedings.

On June 24, 2013, the direct and indirect purchaser plaintiffs filed consolidated amended class action complaints. The direct purchasers' complaint added the Company as a defendant. The plaintiffs in the consolidated class action lawsuits bring claims on behalf of purported classes of direct or indirect purchasers of wallboard from January 1, 2012 to the present for unspecified monetary damages (including treble damages) and in some cases injunctive relief. On July 29, 2013, the Company and American Gypsum answered the complaints, denying all allegations that they conspired to increase the price of drywall and asserting affirmative defenses to the plaintiffs' claims.

While American Gypsum's production of written discovery is substantially complete, discovery is ongoing. Due to the fact that the case is in the discovery phase, and the plaintiffs have not specified the amount of any damages they are seeking, we are unable to estimate the amount of any reasonably possible loss or range of reasonably possible losses. American Gypsum denies the allegations in these lawsuits and will vigorously defend itself against these claims.

Item 1A. Risk Factors

We are affected by the level of demand in the construction industry.

Demand for our products is directly related to the level of activity in the construction industry, which includes residential, commercial and infrastructure construction. While the most recent downturn in residential and commercial construction, which began in calendar 2007, materially impacted our business, certain economic fundamentals began improving in calendar 2012, and have continued to improve into calendar 2014; however, the rate and sustainability of such improvement remains uncertain. Furthermore, activity in the infrastructure construction business is directly related to the amount of government funding available for such projects. Despite the enactment of a new federal highway bill in July 2012, infrastructure spending continues to be adversely impacted by a number of factors, including the budget constraints currently being experienced by federal, state and local governments. Any decrease in the amount of government funds available for such projects or any decrease in construction activity in general (including any weakness in residential construction or commercial construction) could have a material adverse effect on our business, financial condition and results of operations.

Our business is seasonal in nature, and this causes our quarterly results to vary significantly.

A majority of our business is seasonal with peak revenues and profits occurring primarily in the months of April through November when the weather in our markets is more suitable for construction activity. Quarterly results have varied significantly in the past and are likely to vary significantly in the future. Such variations could have a negative impact on the price of our common stock.

We are subject to the risk of unfavorable weather conditions, particularly during peak construction periods, as well as other unexpected operational difficulties.

Unfavorable weather conditions, such as snow, hurricanes, tropical storms and heavy rainfall, can reduce construction activity and adversely affect demand for construction products. Such weather conditions can also increase our costs, reduce our production or impede our ability to transport our products in an efficient and cost-effective manner. Similarly, operational difficulties, such as business interruption due to required maintenance, capital improvement projects or loss of power, can increase our costs and reduce our production. In particular, the occurrence of unfavorable weather conditions and other unexpected operational difficulties during peak

construction periods could adversely affect operating income and cash flow and could have a disproportionate impact on our results of operations for the full year.

We and our customers participate in cyclical industries and regional markets, which are subject to industry downturns.

A majority of our revenues are from customers who are in industries and businesses that are cyclical in nature and subject to changes in general economic conditions. For example, many of our customers operate in the construction industry, which is affected by a variety of factors, such as general economic conditions, changes in interest rates, demographic and population shifts, levels of infrastructure spending and other factors beyond our control. In addition, since our operations are in a variety of geographic markets, our businesses are subject to differing economic conditions in each such geographic market. Economic downturns in the industries to which we sell our products or localized downturns in the regions where we have operations generally have an adverse effect on demand for our products and adversely affect the collectability of our receivables. In general, any downturns in these industries or regions could have a material adverse effect on our business, financial condition and results of operations.

Our products are commodities, which are subject to significant changes in supply and demand and price fluctuations.

The products sold by us are commodities and competition among manufacturers is based largely on price. Prices are often subject to material changes in response to relatively minor fluctuations in supply and demand, general economic conditions and other market conditions beyond our control. Increases in the production capacity of industry participants for products such as gypsum wallboard or cement or increases in cement imports tend to create an oversupply of such products leading to an imbalance between supply and demand, which can have a negative impact on product prices. Currently, there continues to be significant excess capacity in the gypsum wallboard industry in the United States. There can be no assurance that prices for products sold by us will not decline in the future or that such declines will not have a material adverse effect on our business, financial condition and results of operations.

Volatility and disruption of financial markets could affect access to credit.

Difficult economic conditions can cause a contraction in the availability, and increase the cost, of credit in the marketplace. A number of our customers or suppliers have been and may continue to be adversely affected by unsettled conditions in capital and credit markets, which in some cases have made it more difficult or costly for them to finance their business operations. These unsettled conditions have the potential to reduce the sources of liquidity for the Company and our customers.

Our and our customers' operations are subject to extensive governmental regulation, including environmental laws, which can be costly and burdensome.

Our operations and those of our customers are subject to and affected by federal, state and local laws and regulations with respect to such matters as land usage, street and highway usage, noise level and health and safety and environmental matters. In many instances, various certificates, permits or licenses are required in order for us or our customers to conduct business or carry out construction and related operations. Although we believe that we are in compliance in all material respects with applicable regulatory requirements, there can be no assurance that we will not incur material costs or liabilities in connection with regulatory requirements or that demand for our products will not be adversely affected by regulatory issues affecting our customers. In addition, future developments, such as the discovery of new facts or conditions, the enactment or adoption of new or stricter laws or regulations or stricter interpretations of existing laws or regulations, may impose new liabilities on us, require additional investment by us or prevent us from opening, expanding or modifying plants or facilities, any of which could have a material adverse effect on our financial condition or results of operations.

For example, GHGs currently are regulated as pollutants under the CAA and subject to reporting and permitting requirements. Future consequences of GHG permitting requirements and potential emission reduction measures for our operations may be significant because (1) the cement manufacturing process requires the combustion of large amounts of fuel, (2) in our cement manufacturing process, the production of carbon dioxide is a byproduct of the calcination process, whereby carbon dioxide is removed from calcium carbonate to produce calcium oxide, and (3) our gypsum wallboard manufacturing process combusts a significant amount of fossil fuel, especially natural gas.

On September 9, 2010, the EPA finalized National Emissions Standards for Hazardous Air Pollutants, or NESHAP, for portland cement plants ("PC NESHAP"). The PC NESHAP will require a significant reduction in emissions of certain hazardous air pollutants from portland cement kilns. The PC NESHAP sets limits on mercury emissions from existing portland cement kilns and increases the stringency of emission limits for new kilns. The PC NESHAP also sets emission limits for total hydrocarbons, particulate matter (as a surrogate for metal pollutants) and acid gases from cement kilns of all sizes. The PC NESHAP was scheduled to take full effect in September 2013; however, as a result of a decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Portland Cement Ass'n. v. EPA*, 655 F.3d 177 (D.C. Cir.) arising from industry challenges to the PC NESHAP, the EPA proposed a settlement agreement with industry petitioners in May 2012. In February 2013, the EPA published the final revised rule to the PC NESHAP which extended the compliance date until September 9, 2015 for existing cement kilns and made certain changes to the rules governing particulate matter monitoring methods and emissions limits, among other revisions. The PC NESHAP will materially increase capital costs and costs of production for the Company and the industry as a whole.

On March 21, 2011 EPA proposed revised Standards of Performance for New Sources and Emissions Guidelines for Existing Sources for Commercial/Industrial Solid Waste Incinerators (the "CISWI Rule") per Section 129 of the Clean Air Act, which created emission standards for 4 subcategories of industrial facilities, one of which is "Waste Burning Kilns." EPA simultaneously stayed the CISWI Rule for further reconsideration. On February 12, 2013, the EPA finalized revisions to the CISWI Rule. For those cement kilns that utilize non-hazardous secondary materials ("NHSM") as defined in a rule first finalized on March 21, 2011 (and slightly revised on February 12, 2013), the CISWI Rule will require significant reductions in emissions of certain pollutants from applicable cement kilns. The CISWI Rule sets forth emission standards for mercury, carbon monoxide, acid gases, nitrogen oxides, sulfur dioxide, certain metals (lead and cadmium) and more stringent standards than PC NESHAP for particulate matter and dioxin/furans. The CISWI Rule as currently promulgated may materially increase capital costs and costs for production but only for those facilities that will be using applicable solid wastes as fuel. The compliance date for this rule is approximately early 2018 (either 3 years after State CISWI plan approval, or 5 years from the date of the final CISWI Rule, whichever is sooner). It is anticipated that the CISWI Rule may materially increase capital costs and costs of production for the Company and the industry as a whole.

In 2010, the EPA released proposed regulations to address the storage and disposal of coal combustion products, which include fly ash and flue gas desulfurization gypsum ("synthetic gypsum"). We use synthetic gypsum in wallboard manufactured at our Georgetown, South Carolina plant. In its proposed regulations, the EPA is considering two alternatives. Under one proposal, the EPA would characterize coal combustion products destined for disposal as a special waste under Subtitle C of the Resource Conservation and Recovery Act, or RCRA, which is the Subtitle that regulates hazardous wastes. Under this proposal, beneficial encapsulated use of coal combustion products, including synthetic gypsum, would continue to be exempt under the Bevill Amendment and not warrant regulation. Under the other proposal, the EPA would continue to regulate coal combustion products under Subtitle D of RCRA, which regulates solid wastes that are not hazardous wastes. The EPA has stated that Subtitle D regulation could be sufficient to protect human health and the environment. The EPA has emphasized that it does not wish to discourage the beneficial reuse of coal combustion products under either of its two proposals. It is not possible to accurately predict the regulations that will be ultimately adopted, if any. The EPA continues to review the public comments and associated data that were received in response to its 2010 proposal. It is anticipated that a final rule will be issued by the end of 2014. It is possible that such rulemaking could affect our business, financial condition and results of operations, depending on how any such regulation affects our costs or the demand for our products utilizing synthetic gypsum.

The cement plants located in Kansas City, Missouri and Tulsa, Oklahoma are subject to certain obligations under a consent decree with the United States requiring the establishment of facility-specific emissions limitations for certain air pollutants. Not all specific limitations have been finalized; however, upon determination, these limitations, along with specific emissions limitations that have already been finalized, will apply to our operation of these cement plants. It is difficult to predict with reasonable certainty the impact of these limitations on the operations or operating costs of the Kansas City, Missouri and Tulsa, Oklahoma cement plants. Limitations that significantly restrict emissions levels beyond current operating levels may require additional investments by us or place limitations on operations, any of which could have a material adverse effect on our financial condition or results of operations.

The cement plant in Tulsa, Oklahoma is subject to NESHAP for hazardous waste combustors (the "HWC MACT"), which imposes emission limitations and operating limits on cement kilns that are fueled by hazardous wastes. Compliance with the HWC MACT could impose additional liabilities on us or require additional investment by us, which could have a material adverse effect on our financial condition or results of operations. In addition, new developments, such as new laws or regulations, may impose new liabilities on us, require additional investment by us or prevent us from operating or expanding plants or facilities, any of which could have a material adverse effect on our financial condition or results of operations. For example, revised HWC MACT regulations would apply to one of the cement kilns used at the cement plant in Tulsa, Oklahoma. This revision may require new control requirements and significant capital expenditure for compliance. The revised regulations have not been proposed. In 2013, the EPA adopted the final CISWI Rule (as discussed above) that likely will apply to one of the cement kilns used by the cement plant in Tulsa, Oklahoma and may impose new control requirements requiring significant capital expenditures for compliance. Existing CISWI units will need to comply with the CISWI Rule when it becomes effective, which is expected to occur in approximately early 2018.

We may incur significant costs in connection with pending and future litigation.

We are, or may become, party to various lawsuits, claims, investigations and proceedings, including but not limited to personal injury, environmental, antitrust, tax, asbestos, property entitlements and land use, intellectual property, commercial, contract, product liability, health and safety, and employment matters. The outcome of pending or future lawsuits, claims, investigations or proceedings is often difficult to predict, but could be adverse and material in amount. In addition, the defense of these lawsuits, claims, investigations and proceedings may divert our management's attention and we may incur significant costs in defending these matters. See Part II Item 1. Legal Proceedings of this report.

Our results of operations are subject to significant changes in the cost and availability of fuel, energy and other raw materials.

Major cost components in each of our businesses are the costs of fuel, energy and raw materials. Significant increases in the costs of fuel, energy or raw materials or substantial decreases in their availability could materially and adversely affect our sales and operating profits. Prices for fuel, energy or raw materials used in connection with our businesses could change significantly in a short period of time for reasons outside our control. Prices for fuel and electrical power, which are significant components of the costs associated with our gypsum wallboard and cement businesses, have fluctuated significantly in recent years and may increase in the future. In the event of large or rapid increases in prices, we may not be able to pass the increases through to our customers in full, which would reduce our operating margin.

We may become subject to significant clean-up, remediation and other liabilities under applicable environmental laws.

Our operations are subject to state, federal and local environmental laws and regulations, which impose liability for cleanup or remediation of environmental pollution and hazardous waste arising from past acts. These laws and regulations also require pollution control and prevention, site restoration and operating permits and/or approvals to conduct certain of our operations or expand or modify our facilities. Certain of our operations may from time-to-time involve the use of substances that are classified as toxic or hazardous substances within the

meaning of these laws and regulations. Additionally, any future laws or regulations addressing GHG emissions would likely have a negative impact on our business or results of operations, whether through the imposition of raw material or production limitations, fuel-use or carbon taxes emission limitations or reductions or otherwise. We are unable to estimate accurately the impact on our business or results of operations of any such law or regulation at this time. Risk of environmental liability (including the incurrence of fines, penalties or other sanctions or litigation liability) is inherent in the operation of our businesses. As a result, it is possible that environmental liabilities and compliance with environmental regulations could have a material adverse effect on our operations in the future.

Significant changes in the cost and availability of transportation could adversely affect our business, financial condition and results of operations.

Some of the raw materials used in our manufacturing processes, such as coal or coke, are transported to our facilities by truck or rail. In addition, transportation logistics play an important part in allowing us to supply products to our customers, whether by truck, rail or barge. For example, we deliver gypsum wallboard to many areas of the United States and the transportation costs associated with the delivery of our wallboard products represent a significant portion of the variable cost of our gypsum wallboard segment. Significant increases in the cost of fuel or energy can result in material increases in the cost of transportation, which could materially and adversely affect our operating profits. In addition, reductions in the availability of certain modes of transportation such as rail or trucking could limit our ability to deliver product and therefore materially and adversely affect our operating profits.

Our debt agreements contain restrictive covenants and require us to meet certain financial ratios and tests, which limit our flexibility and could give rise to a default if we are unable to remain in compliance.

Our Amended Credit Facility and the Note Purchase Agreements governing our Senior Notes contain, among other things, covenants that limit our ability to finance future operations or capital needs or to engage in other business activities, including but not limited to our ability to:

- Incur additional indebtedness;
- Sell assets or make other fundamental changes;
- Engage in mergers and acquisitions;
- Pay dividends and make other restricted payments;
- Make investments, loans, advances or guarantees;
- Encumber our assets or those of our restricted subsidiaries;
- Enter into transactions with our affiliates.

In addition, these agreements require us to meet and maintain certain financial ratios and tests, which may require that we take action to reduce our debt or to act in a manner contrary to our business objectives. Events beyond our control, including the changes in general business and economic conditions, may impair our ability to comply with these covenants or meet those financial ratios and tests. A breach of any of these covenants or failure to maintain the required ratios and meet the required tests may result in an event of default under these agreements. This may allow the lenders under these agreements to declare all amounts outstanding to be immediately due and payable, terminate any commitments to extend further credit to us and pursue other remedies available to them under the applicable agreements. If this occurs, our indebtedness may be accelerated and we may not be able to refinance the accelerated indebtedness on favorable terms, or at all, or repay the accelerated indebtedness. In general, the occurrence of any event of default under these agreements could have a material adverse effect on our financial condition or results of operations.

We have incurred substantial indebtedness, which could adversely affect our business, limit our ability to plan for or respond to changes in our business and reduce our profitability.

Our future ability to satisfy our debt obligations is subject, to some extent, to financial, market, competitive, legislative, regulatory and other factors that are beyond our control. Our substantial debt obligations could have

negative consequences to our business, and in particular could impede, restrict or delay the implementation of our business strategy or prevent us from entering into transactions that would otherwise benefit our business. For example:

- we may be required to dedicate a substantial portion of our cash flows from operations to payments on our indebtedness, thereby reducing the availability of our cash flow for other purposes, including business development efforts, capital expenditures or strategic acquisitions;
- we may not be able to generate sufficient cash flow to meet our substantial debt service obligations or to fund our other liquidity needs. If this occurs, we may have to take actions such as selling assets, selling equity or reducing or delaying capital expenditures, strategic acquisitions, investments and joint ventures or restructuring our debt;
- as a result of the amount of our outstanding indebtedness and the restrictive covenants to which we are subject, if we determine that we require additional financing to fund future working capital, capital investments or other business activities, we may not be able to obtain such financing on commercially reasonable terms, or at all; and
- our flexibility in planning for, or reacting to, changes in our business and industry may be limited, thereby placing us at a competitive disadvantage compared to our competitors that have less indebtedness.

Our production facilities may experience unexpected equipment failures, catastrophic events and scheduled maintenance.

Interruptions in our production capabilities may cause our productivity and results of operations to decline significantly during the affected period. Our manufacturing processes are dependent upon critical pieces of equipment. Such equipment may, on occasion, be out of service as a result of unanticipated events such as fires, explosions, violent weather conditions or unexpected operational difficulties. We also have periodic scheduled shut-downs to perform maintenance on our facilities. Any significant interruption in production capability may require us to make significant capital expenditures to remedy problems or damage as well as cause us to lose revenue and profits due to lost production time, which could have a material adverse effect on our results of operations and financial condition.

Increases in interest rates and inflation could adversely affect our business and demand for our products, which would have an adverse effect on our results of operations.

Our business is significantly affected by the movement of interest rates. Interest rates have a direct impact on the level of residential, commercial and infrastructure construction activity by impacting the cost of borrowed funds to builders. Higher interest rates could result in decreased demand for our products, which would have a material adverse effect on our business and results of operations. In addition, increases in interest rates could result in higher interest expense related to borrowings under our Credit Facility. Inflation can result in higher interest rates. With inflation, the costs of capital increase, and the purchasing power of our cash resources can decline. Current or future efforts by the government to stimulate the economy may increase the risk of significant inflation, which could have a direct and indirect adverse impact on our business and results of operations.

Any new business opportunities we may elect to pursue will be subject to the risks typically associated with the early stages of business development or product line expansion.

We are continuing to pursue opportunities, including our frac sand business, which are natural extensions of our existing core businesses and which allow us to leverage our core competencies, existing infrastructure and customer relationships. See “Management’s Discussion and Analysis of Financial Conditions and Results of Operations – Executive Summary.” Our likelihood of success in pursuing and realizing these opportunities must be considered in light of the expenses, difficulties and delays frequently encountered in connection with the early phases of business development or product line expansion, including the difficulties involved in obtaining permits; planning and constructing new facilities; transporting and storing products; establishing, maintaining or

expanding customer relationships; as well navigating the regulatory environment in which we operate. There can be no assurance that we will be successful in the pursuit and realization of these opportunities.

Our Oil and Gas Proppants business and financial performance depends on the level of activity in the oil and natural gas industries.

Our operations that produce frac sand are materially dependent on the levels of activity in natural gas and oil exploration, development and production. More specifically, the demand for the frac sand we produce is closely related to the number of natural gas and oil wells completed in geological formations where sand-based proppants are used in fracture treatments. These activity levels are affected by both short- and long-term trends in natural gas and oil prices. In recent years, natural gas and oil prices and, therefore, the level of exploration, development and production activity, have experienced significant fluctuations. Worldwide economic, political and military events, including war, terrorist activity, events in the Middle East and initiatives by the Organization of the Petroleum Exporting Countries ("OPEC"), have contributed, and are likely to continue to contribute, to price volatility. Additionally, warmer than normal winters in North America and other weather patterns may adversely impact the short-term demand for natural gas and, therefore, demand for our products. Reduction in demand for natural gas to generate electricity could also adversely impact the demand for frac sand. A prolonged reduction in natural gas and oil prices would generally depress the level of natural gas and oil exploration, development, production and well completion activity and result in a corresponding decline in the demand for the frac sand we produce. In addition, any future decreases in the rate at which oil and natural gas reserves are discovered or developed, whether due to increased governmental regulation, limitations on exploration and drilling activity or other factors, could have material adverse effect on our oil and gas proppants business, even in a stronger natural gas and oil price environment.

We may be adversely affected by decreased demand for frac sand or the development of either effective alternative proppants or new processes to replace hydraulic fracturing.

Frac sand is a proppant used in the completion and re-completion of natural gas and oil wells through hydraulic fracturing. Frac sand is the most commonly used proppant and is less expensive than ceramic proppant, which is also used in hydraulic fracturing to stimulate and maintain oil and natural gas production. A significant shift in demand from frac sand to other proppants, such as ceramic proppants, could have a material adverse effect on our oil and gas proppants business. The development and use of other effective alternative proppants, or the development of new processes to replace hydraulic fracturing altogether, could also cause a decline in demand for the frac sand we produce and could have a material adverse effect on our oil and gas proppants business.

Our operations are dependent on our rights and ability to mine our properties and on our having renewed or received the required permits and approvals from governmental authorities and other third parties.

We hold numerous governmental, environmental, mining and other permits, water rights and approvals authorizing operations at many of our facilities. A decision by a governmental agency or other third party to deny or delay issuing a new or renewed permit or approval, or to revoke or substantially modify an existing permit or approval, could have a material adverse effect on our ability to continue operations at the affected facility. Expansion of our existing operations is also predicated on securing the necessary environmental or other permits, water rights or approvals, which we may not receive in a timely manner or at all.

Title to, and the area of, mineral properties and water rights may also be disputed. Mineral properties sometimes contain claims or transfer histories that examiners cannot verify. A successful claim that we do not have title to one or more of our properties or lack appropriate water rights could cause us to lose any rights to explore, develop and extract any minerals on that property, without compensation for our prior expenditures relating to such property. Our business may suffer a material adverse effect in the event one or more of our properties are determined to have title deficiencies.

In some instances, we have received access rights or easements from third parties, which allow for a more efficient operation than would exist without the access or easement. A third party could take action to suspend the

access or easement, and any such action could be materially adverse to or results of operations or financial conditions.

A cyber-attack or data security breach affecting our information technology systems may negatively affect our businesses, financial condition and operating results.

We use information technology systems to collect, store and transmit the data needed to operate our businesses, including our confidential and proprietary information. Although we have implemented industry-standard security safeguards and policies to prevent unauthorized access or disclosure of such information, we cannot prevent all cyber-attacks or data security breaches. If such an attack or breach occurs, our businesses could be negatively affected, and we could incur additional costs in remediating the attack or breach and suffer reputational harm due to the theft or disclosure of our confidential information.

Risks Related to the Pending Acquisition

We may not be able to complete the Pending Acquisition.

Our ability to complete the Pending Acquisition is subject to various closing conditions, which may not be satisfied or may take longer than expected. Accordingly, there is no assurance that we will in fact acquire or own CRS Proppants. Although some of the information included in this Report generally assumes consummation of the Pending Acquisition, we cannot assure you that the Pending Acquisition will occur on the terms currently contemplated or at all. If we fail to close the Pending Acquisition, depending on certain circumstances, we could be subject to litigation relating to the failure of the Pending Acquisition to be completed, including claims for damages from CRS Proppants or other persons. If the Pending Acquisition is not completed the price of our common stock could decline.

We may not realize any or all of the anticipated benefits of the Pending Acquisition and the Pending Acquisition may adversely impact our existing operations.

We may not be able to achieve the anticipated benefits of the Pending Acquisition even if we complete it. Upon completion of the Pending Acquisition, we will need to integrate CRS Proppants with our existing operations. We may not be able to accomplish the integration of CRS Proppants smoothly, successfully or within the anticipated costs or timeframe. In general, we cannot assure you that we will be able to timely achieve the anticipated incremental revenues, cost savings, operational synergies and other expected benefits of the Pending Acquisition.

The diversion of our management's attention from our current operations to integration efforts and any difficulties encountered in combining operations could prevent us from realizing the full benefits anticipated to result from the Pending Acquisition and could adversely affect our business and the price of our common stock. The integration process may be complex, costly and time-consuming. The difficulties of integrating CRS Proppants with our business include, among others:

- failure to implement our business plan for the combined business;
- unanticipated issues in integrating logistics, information, communications and other systems;
- unanticipated changes in applicable laws and regulations;

- the impact of the Pending Acquisition on our internal controls and compliance with the regulatory requirements under the Sarbanes-Oxley Act of 2002; and
- unanticipated issues, expenses and liabilities.

We will incur significant liabilities and costs as a result of or in connection with the Pending Acquisition.

Upon consummation of the Pending Acquisition we will generally be responsible for all liabilities and obligations that arise in connection with the operation of CRS Proppants.

In addition, we will incur significant costs in connection with the Pending Acquisition. The substantial majority of these costs will be non-recurring transaction expenses and costs. Significant costs will be incurred whether or not the Pending Acquisition is consummated. Furthermore, substantial time and resources have been and may continue to be devoted to the Pending Acquisition and related matters, which could otherwise have been devoted to other opportunities that may have been beneficial to us.

We will incur substantial indebtedness in order to finance the Pending Acquisition, which could adversely affect our business, limit our ability to plan for or respond to changes in our business and reduce our profitability.

In order to finance the Pending Acquisition, we expect to incur additional borrowings of approximately $225.0 million under our Amended Credit Facility. We expect to use cash flow generated from our future operations to make payments on our debt obligations and to fund planned capital expenditures. Our future ability to satisfy these obligations and make these expenditures is subject, to some extent, to financial, market, competitive, legislative, regulatory and other factors that are beyond our control. Our substantial debt obligations could have negative consequences to our business, which could impede, restrict or delay the implementation of our business strategy or prevent us from entering into transactions that would otherwise benefit our business. For example:

- we may be required to dedicate a substantial portion of our cash flows from operations to payments on our indebtedness, thereby reducing the availability of our cash flow for other purposes, including business development efforts, capital expenditures or strategic acquisitions;
- we may not be able to generate sufficient cash flow to meet our substantial debt service obligations or to fund our other liquidity needs. If we cannot service our indebtedness, we may have to take actions such as selling assets, selling equity or reducing or delaying capital expenditures, strategic acquisitions, investments and joint ventures or restructure our debt;
- we may not be able to obtain additional financing on commercially reasonable terms or at all to fund future working capital, capital investments and other business activities; and
- our flexibility in planning for, or reacting to, changes in our business and industry may be limited, thereby placing us at a competitive disadvantage compared to our competitors that have less indebtedness.

As of September 30, 2014, on a pro forma basis giving effect to the Pending Acquisition, the aggregate principal amount of our debt instruments with exposure to interest rate risk was approximately $345.0 million. As of the same date, on a pro forma basis, each change in interest rates of .125 percentage points would result in an approximate $0.4 million change in our annual cash interest expense before any principal payment on our financial instruments with exposure to interest rate risk. As a result, increases in interest rates will increase the cost of servicing our financial instruments with exposure to interest rate risk and could materially reduce our profitability and cash flows.

This report includes various forward-looking statements, which are not facts or guarantees of future performance and which are subject to significant risks and uncertainties.

This report and other materials we have filed or will file with the SEC, as well as information included in oral statements or other written statements made or to be made by us, contain or may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, Section 21E of the Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. You can identify these statements by the fact that they do not relate to matters of a strictly factual or historical nature and generally discuss or relate to forecasts, estimates or other expectations regarding future events. Generally, the words “believe,” “expect,” “intend,” “estimate,” “anticipate,” “project,” “may,” “can,” “could,” “might,” “will” and similar expressions identify forward-looking statements, including statements related to expected operating and performing results, planned transactions, plans and objectives of management, future developments or conditions in the industries in which we participate, including future prices for our products, audits and legal proceedings to which we are a party and other trends, developments and uncertainties that may affect our business in the future.

Forward-looking statements are not historical facts or guarantees of future performance but instead represent only our beliefs at the time the statements were made regarding future events, which are subject to significant risks, uncertainties, and other factors, many of which are outside of our control. Any or all of the forward-looking statements made by us may turn out to be materially inaccurate. This can occur as a result of incorrect assumptions, changes in facts and circumstances or the effects of known risks and uncertainties. Many of the risks and uncertainties mentioned in this report or other reports filed by us with the SEC, including those discussed in the risk factor section of this report, will be important in determining whether these forward-looking statements prove to be accurate. Consequently, neither our stockholders nor any other person should place undue reliance on our forward-looking statements and should recognize that actual results may differ materially from those that may be anticipated by us.

All forward-looking statements made in this report are made as of the date hereof, and the risk that actual results will differ materially from expectations expressed in this report will increase with the passage of time. We undertake no obligation, and disclaim any duty, to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changes in our expectations or otherwise.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The disclosure required under this Item is included in “Management’s Discussion and Analysis of Results of Operations and Financial Condition” of this Quarterly Report on Form 10-Q under the heading “Share Repurchases” and is incorporated herein by reference.

Item 4. Mine Safety Disclosures

The information concerning mine safety violations or other regulatory matters required by Section 1503 (a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K is included in Exhibit 95 to this Form 10-Q.

Item 6. Exhibits

2.1*	Securities Purchase Agreement between Northern White Sand LLC and the sellers named therein, dated October 16, 2014. **
10.1*	Eagle Materials Inc. Director Compensation Summary.(1)
10.2*	Form of Management Non-Qualified Stock Option Agreement.(1)
10.3*	Form of Management Restricted Stock Agreement.(1)
10.4*	Form of Director Non-Qualified Stock Option Agreement.(1)
10.5*	Form of Director Restricted Stock Agreement.(1)
10.6	Eagle Materials Inc. Amended and Restated Incentive Plan (filed as Exhibit A to the Company's Schedule 14A, filed with the Securities and Exchange Commission on June 21, 2013 and incorporated herein by reference).(1)
10.7*	Third Amended and Restated Credit Agreement by and among Eagle Materials Inc., JPMorgan Chase Bank, N.A., as Administrative Agent, and the other Lenders party thereto dated October 30, 2014.
12.1*	Computation of Ratio of Earnings to Fixed Charges.
31.1*	Certification of the Chief Executive Officer of Eagle Materials Inc. pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934, as amended.
31.2*	Certification of the Chief Financial Officer of Eagle Materials Inc. pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934, as amended.
32.1*	Certification of the Chief Executive Officer of Eagle Materials Inc. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of the Chief Financial Officer of Eagle Materials Inc. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
95*	Mine Safety Disclosure
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.

* Filed herewith.

** Pursuant to Item 601(b)(2) of Regulation S-K, the Company agrees to furnish supplementally a copy of any omitted exhibit or schedule to the Securities and Exchange Commission upon request.

(1) Management contract or compensatory plan or arrangement.

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.

EAGLE MATERIALS INC.
Registrant

November 5, 2014

/s/ STEVEN R. ROWLEY
Steven R. Rowley
President and Chief Executive Officer
(principal executive officer)

November 5, 2014

/s/ D. CRAIG KESLER
D. Craig Kesler
Executive Vice President – Finance and Administration and Chief Financial Officer
(principal financial officer)

November 5, 2014

/s/ WILLIAM R. DEVLIN
William R. Devlin
Senior Vice President – Controller and Chief Accounting Officer
(principal accounting officer)

Exhibit 2.1

EXECUTION COPY

SECURITIES PURCHASE AGREEMENT

by and among

CRS HOLDCO LLC,
as the Company,

the Sellers named herein,

CRS SELLER REPRESENTATIVE, LLC,
as Seller Representative

and

NORTHERN WHITE SAND LLC,
as the Purchaser

Dated as of October 16, 2014

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SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT, dated as of October 16, 2014, is entered into by and among (i) CRS Holdco LLC, a Delaware limited liability company (the "Company"), (ii) Eos Partners, L.P., a Delaware limited partnership ("E Partners"), and Eos Capital Partners IV, L.P., a Delaware limited partnership ("E Capital Partners" and, together with E Partners, the "E Sellers"), (iii) Original CRS LLC, a Delaware limited liability company ("Original CRS"), Steve Cobb, Bon Accord Partners, L.P., an Oklahoma limited partnership ("Bon Accord") and Stephen R. Horn (collectively, the "Other Sellers" and, together with the E Sellers, the "Sellers"), (iv) CRS Seller Representative, LLC, a Delaware limited liability company, as the representative (the "Seller Representative") of the Sellers, and (v) Northern White Sand LLC, a Delaware limited liability company (the "Purchaser").

W I T N E S S E T H:

WHEREAS, each of ECP IV CRS Preferred Co., a Delaware corporation ("EIV Preferred Blocker"), ECP IV CRS C Unit Co., a Delaware corporation ("EIV C Unit Blocker"), Eos CRS Preferred Co., a Delaware corporation ("E Preferred Blocker"), Eos CRS C Unit Co., a Delaware corporation ("E C Unit Blocker" and, together with EIV Preferred Blocker, EIV C Unit Blocker and E Preferred Blocker, the "Blocker Companies"), Pierpont Atlantic LLC, an Oklahoma limited liability company ("Pierpont"), and certain of the Other Sellers directly own the number and class of Equity Interests in the Company set forth opposite such Person's name on Schedule 1.01 hereto, which, together constitute all of the issued and outstanding Equity Interests in the Company (other than the outstanding Class P Common Units (as defined in the Company LLC Agreement) in the Company owned by Persons other than Horn and Cobb);

WHEREAS, the E Sellers are the record and are beneficial owners of all of the outstanding shares of capital stock of the Blocker Companies (the "Blocker Shares");

WHEREAS, Cobb and Bon Accord are the record and beneficial owners of all of the outstanding Equity Interests in Pierpont (the "Pierpont Interests");

WHEREAS, (i) each of Horn, Cobb and Original CRS desires to sell, assign, transfer and deliver to the Purchaser all of the Equity Interests in the Company ("Direct Equity Interests") owned by him or it, (ii) each of the E Sellers desires to sell, assign, transfer and deliver to the Purchaser all of the Blocker Shares owned by it (other than any Redeemed Blocker Shares), (iii) each of Cobb and Bon Accord desires to sell, assign, transfer and deliver to the Purchaser all of the Pierpont Interests and (iv) the Purchaser desires to acquire and accept the Direct Equity Interests, the Blocker Shares (other than any Redeemed Blocker Shares) and the Pierpont Interests (collectively, the "Securities"), in each case upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, concurrently with the execution and delivery hereof and as a condition to the willingness of the Purchaser to enter into this Agreement, each of the holders of outstanding Class P Common Units in the Company (other than Horn and Cobb) is entering into a Class P Common Unit Redemption Agreement with the Company, in the form attached as Exhibit A hereto (each, a "Redemption Agreement"), which agreement sets forth the terms and conditions upon which the Company will purchase all of the Class P Common Units held by such holders at the Closing;

WHEREAS concurrently with the execution and delivery hereof and as a condition to the willingness of the Purchaser to enter into this Agreement, Cobb and Horn are entering into Consulting Agreements with the Company, in the forms included in Exhibit B hereto, to be effective as of the Closing Date (each, a "Consulting Agreement"), which agreements set forth the terms and conditions upon which each of Cobb and Horn has agreed to provide consulting services to the Company after the Closing; and

WHEREAS, capitalized terms used herein without definition have the respective meanings set forth in Article XIII;

NOW, THEREFORE, in consideration of the premises, the terms and provisions set forth herein, the mutual benefits to be gained by the performance thereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
PURCHASE AND SALE

SECTION 1.01. *Purchase and Sale of Securities.* Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, (a) each of Horn, Cobb and Original CRS shall sell, assign, transfer and deliver to the Purchaser the Direct Equity Interests set forth opposite his or its name on Schedule 1.01 hereto, free and clear of any Liens, Claims or encumbrances (other than restrictions on subsequent transfers under applicable federal and state securities laws), and the Purchaser shall acquire and accept such Direct Equity Interests from Horn, Cobb and Original CRS, (b) each of the E Sellers shall sell, assign, transfer and deliver to the Purchaser the Blocker Shares (other than any Redeemed Blocker Shares) set forth opposite the name of such E Seller on Schedule 1.01 hereto, free and clear of any Liens, Claims or encumbrances (other than restrictions on subsequent transfers under applicable federal and state securities laws), and the Purchaser shall acquire and accept such Blocker Shares from the E Sellers and (c) each of Cobb and Bon Accord shall sell, assign, transfer and deliver to the Purchaser the Pierpont Interests, free and clear of any Liens, Claims or encumbrances (other than restrictions on subsequent transfers under applicable federal and state securities laws), and the Purchaser shall acquire and accept the Pierpont Interests from Cobb and Bon Accord.

SECTION 1.02. *Purchase Price.* The aggregate consideration that the Purchaser shall pay at the Closing for the sale, assignment, transfer and delivery of the Securities pursuant to this Agreement shall be an amount in cash (the "Initial Purchase Price") equal to:

(a) $224,700,000 (the "Base Purchase Price");

(b) *minus*, the Closing Indebtedness;

(c) *minus*, the Tax Liability Amount;

(d) *minus*, the Retention Award Amount;

(e) *plus*, the Estimated Closing Cash;

(f) *plus*, the Pre-Closing Capacity Expansion Project Amount;

(g) *plus*, the amount, if any, by which the Estimated Working Capital Amount exceeds the Target Working Capital Amount, or *minus*, the amount, if any, by which the Estimated Working Capital Amount is less than the Target Working Capital Amount; and

(h) *plus*, the amount of the Estimated BH Non-Blocker Tax Liability.

The Initial Purchase Price shall be subject to adjustment in accordance with the terms of this Agreement, including Sections 1.03 and 1.04.

SECTION 1.03. *Closing Estimates and Calculations.* No later than three Business Days prior to the Closing Date, the Company shall deliver to the Purchaser a statement (the "Estimated Closing Statement"), which (i) shall attach an estimated consolidated balance sheet of the Target Companies (the "Estimated Closing Balance Sheets") as of 11:59 p.m., Dallas, Texas time on the day immediately preceding the Closing Date (the "Effective Time"), prepared in accordance with GAAP applied on a basis consistent with past practice and the accounting principles and illustrations contained in Exhibit C hereto (the "Accounting Principles and Illustration"), (ii) shall attach payoff letters ("Payoff Letters") with respect to all of the outstanding Indebtedness of the Acquired Companies, which letters will specify the total amounts required to be paid at the Closing to settle and extinguish such Indebtedness (such amounts being collectively referred to as the "Closing Indebtedness"), shall provide instructions as to the payment of such Closing Indebtedness and shall provide that the lenders agree to the immediate release of all Liens on the properties and assets of the Acquired Companies that secure such Indebtedness upon receipt of the amounts indicated in such Payoff Letters, (iii) shall set forth in reasonable detail the Company's estimate of the Tax Liability Amount (the "Estimated Tax Liability Amount") and an estimate of the BH Non-Blocker Tax Liability ("Estimated BH Non-Blocker Tax Liability"), (iv) shall set forth in reasonable detail the Company's calculation of the Pre-Closing Capacity Expansion Project Amount and (v) shall set forth in reasonable detail the Company's estimate of Net Working Capital at the Effective Time (the "Estimated Working Capital Amount"). At all times prior to the Closing Date, the Purchaser shall be entitled to review, comment on and request reasonable changes to each of the foregoing calculations and estimates, and the Company will consider such comments and requests in good faith. Any changes to the amounts set forth in the Estimated Closing Statement that are agreed upon in writing by the parties prior to or at the Closing shall be substituted for the amounts set forth in the Estimated Closing Statement; *provided*, that the Company shall have no obligation to agree to any changes to the foregoing calculations or estimates in advance of the Closing. The Company shall provide the Purchaser and its representatives with such access to all relevant personnel, work papers, schedules, memoranda and other documents prepared by the Company or its representatives during normal business hours as may be reasonably necessary in order to enable the Purchaser to verify the amounts set forth in the Estimated Closing Statement.

SECTION 1.04. *Post-Closing Adjustment.* After the Closing, the Initial Purchase Price shall be adjusted in accordance with the following provisions:

(a) No later than 90 days after the Closing Date, the Purchaser shall prepare, or cause to be prepared, and shall deliver to the Seller Representative a statement (the "Closing Statement"), which (i) shall attach a consolidated balance sheet of the Target Companies as of the Effective Time, prepared in accordance with GAAP applied on a basis consistent with past practice and the Accounting Principles and Illustration, (ii) shall set forth in reasonable detail the Purchaser's calculation of the Tax Liability Amount (the "Closing Tax Liability Amount"), (iii) shall set forth in reasonable detail the Purchaser's calculation of the BH Non-Blocker Tax Liability (the "Closing BH Non-Blocker Tax Liability"), (iv) shall set forth in reasonable detail the Purchaser's calculation of the amount of Cash held by the Acquired Companies at the Effective Time, which shall not include any Cash used to fund the redemption of Class P Common Units of the Company pursuant to the Redemption Agreements (the "Closing Cash"), and (v) shall set forth in reasonable detail the Purchaser's calculation of Net Working Capital at the Effective Time (the "Final Working Capital Amount"). From the date of delivery of the Closing Statement until the determination of the final adjustments provided for in this Section 1.04, the Purchaser shall cause the Company to give the Seller Representative such access to all relevant personnel, work papers, schedules, memoranda and other documents prepared by the Purchaser, the Company or their respective representatives during normal business hours as may be reasonably necessary in order to enable the Seller Representative to verify the amounts set forth in the Closing Statement.

(b) The Seller Representative shall be entitled to dispute, on behalf of the Sellers, any amounts set forth in the Closing Statement if, but only if, the Seller Representative delivers a written notice (an "Objection Notice") to the Purchaser within 30 days after its receipt of the Closing Statement in which it objects to one or more such amounts (the date upon which the Seller Representative delivers an Objection Notice to the Purchaser being hereinafter referred to as the "Objection Date"). The Objection Notice shall identify each amount to which the Seller Representative is objecting (each, a "Disputed Amount") and set forth in reasonable detail the basis for the Seller Representative's objection to each Disputed Amount. If the Seller Representative does not deliver an Objection Notice within 30 days after its receipt of the Closing Statement, the amounts set forth in the Closing Statement shall become final and binding on each of the parties. In addition, if the Seller Representative does deliver an Objection Notice, any item or amount set forth in the Closing Statement to which no dispute is raised in such Objection Notice will be final, conclusive and binding on the parties.

(c) If the Seller Representative delivers an Objection Notice to the Purchaser within the time period specified in paragraph (b) above, the Purchaser and the Seller Representative shall attempt in good faith to agree upon each Disputed Amount during the period commencing on the Objection Date and ending 30 days thereafter (the "Negotiation Period"). If the Purchaser and the Seller Representative agree in writing prior to the expiration of the Negotiation Period on any Disputed Amount, such agreed amount shall be final, conclusive and binding on the parties and the payment provided for in paragraph (f) below shall be based upon such agreed amount.

(d) If the Purchaser and the Seller Representative do not agree in writing during the Negotiation Period on any Disputed Amount or Disputed Amounts, each of the Purchaser and the Seller Representative shall submit to the other, at or before 5:00 p.m., Central time, on the third Business Day after the expiration of the Negotiation Period, a statement setting forth its calculation of each remaining Disputed Amount (each, an "Arbiter Objection Statement"), it being understood that if either party fails to deliver an Arbiter Objection Statement by 11:59 p.m., Central time, on such date, such party shall be deemed to have accepted and agreed to the Arbiter Objection Statement submitted by the other party (with the same effect as if the amounts set forth in such statement had been agreed upon by the parties pursuant to paragraph (c) above). All Disputed Amounts set forth in any Arbiter Statement shall be submitted to PricewaterhouseCoopers or, if such firm declines to serve as accounting arbiter or the parties agree in writing not to engage such firm, such other firm of independent public accountants as is mutually agreed upon by the Purchaser and the Seller Representative (in either case, the "Final Arbiter"), which firm shall be jointly engaged by the Purchaser and the Seller Representative to make a final and binding determination as to all such Disputed Amounts as promptly as practicable after its appointment. In determining the proper calculation of any Disputed Amounts, the Final Arbiter shall (i) be bound by the terms of this Section 1.04; (ii) limit its review to the matters in dispute specifically set forth in the documents submitted to the Final Arbiter pursuant to this Agreement (as well as any information provided to it in any meetings or telephone conferences that are held at the election of the Final Arbiter to address any issues or questions that arise in connection with the matters presented to it, it being understood that representatives of both the Purchaser and the Seller Representative shall be entitled to attend and participate in such meetings and telephone conferences); and (iii) further limit its review to whether the calculations in each Arbiter Objection Statement are based on amounts that are accurately derived from the accounting records of the Target Companies, contain mathematical errors and are otherwise calculated in accordance with this Agreement and the Accounting Principles and Illustration. The Final Arbiter may not increase the amount of any item in dispute above the highest amount set forth in the Arbiter Objection Statements nor decrease such amount below the lowest amount set forth in the Arbiter Objection Statements. The Final Arbiter shall send its written determination of each Disputed Amount to the Purchaser and the Seller Representative, and such determination and calculation shall be final and binding on each of the parties, absent fraud or manifest error. The fees and expenses of the Final Arbiter shall be allocated between the Seller Representative (on behalf of the Sellers) on the one hand and the Purchaser on the other hand (as determined by the Final Arbiter) to reflect the ratio for each such party or parties of (i) the portion of the total Disputed Amounts reflected in the Arbiter Objection Statements as to which the Arbiter found in favor of the other party or parties to (ii) the total Disputed Amounts reflected in the Arbiter Objection Statements. The Final Arbiter may not award damages, interest or penalties to any Party with respect to any matter.

(e) Upon the final determination, in accordance with paragraph (c) or (d) above of the Closing Tax Liability Amount, the BH Non-Blocker Tax Liability, the Closing Cash and the Final Working Capital Amount, the Purchase Price shall be adjusted as follows:

(i) With respect to the Tax Liability Amount:

(A) if the Closing Tax Liability Amount is greater than the Estimated Tax Liability Amount, then an amount equal to the excess of (x) the Closing Tax Liability Amount over (y) the Estimated Tax Liability Amount shall be subtracted from the Initial Purchase Price; or

(B) if the Closing Tax Liability Amount is less than the Estimated Closing Tax Liability Amount, then an amount equal to the excess of (x) the Estimated Closing Tax Liability Amount over (y) the Closing Tax Liability Amount shall be added to the Initial Purchase Price;

(ii) With respect to the Closing Cash:

(A) if the Closing Cash is greater than the Estimated Closing Cash, then an amount equal to the excess of (x) the Closing Cash over (y) the Estimated Closing Cash shall be added to the Initial Purchase Price; or

(B) if the Closing Cash is less than the Estimated Closing Cash, then an amount equal to the excess of (x) the Estimated Closing Cash over (y) the Closing Cash shall be subtracted from the Initial Purchase Price; and

(iii) With respect to Net Working Capital:

(A) if the Final Working Capital Amount is greater than the Estimated Working Capital Amount, then an amount equal to the excess of (x) the Final Working Capital Amount over (y) the Estimated Working Capital Amount shall be added to the Initial Purchase Price; or

(B) if the Final Working Capital Amount is less than the Estimated Working Capital Amount, then an amount equal to the excess of (x) the Estimated Working Capital Amount over (y) the Final Working Capital Amount shall be subtracted from the Initial Purchase Price; and

(iv) with respect to the BH Non-Blocker Tax Liability:

(A) if the Closing BH Non-Blocker Tax Liability is greater than the Estimated BH Non-Blocker Tax Liability, then an amount equal to the excess of (x) the Closing BH Non-Blocker Tax Liability over (y) the Estimated BH Non-Blocker Tax Liability shall be added to the Initial Purchase Price; or

(B) if the Closing BH Non-Blocker Tax Liability is less than the Estimated BH Non-Blocker Tax Liability, then an amount equal to the excess of (x) the Estimated BH Non-Blocker Tax Liability over (y) the Closing BH Non-Blocker Tax Liability shall be subtracted from the Initial Purchase Price.

(f) As promptly as practicable, but in any event no later than the third Business Day following final and binding determination of amount of the net adjustment to the Initial Purchase Price, if any, resulting from the operation of the provisions of paragraph (e) above (the "Adjustment Amount"):

(i) if the Adjustment Amount represents a decrease to the Initial Purchase Price, the Seller Responsible Parties shall pay to the Purchaser, in accordance with their Pro Rata Shares , an amount in cash, by wire transfer of immediately available funds, equal to the Adjustment Amount;

(ii) if the Adjustment Amount represents an increase to the Initial Purchase Price, the Purchaser shall pay to the Seller Representative, for the account of the Sellers, an amount in cash, by wire transfer of immediately available funds, equal to the Adjustment Amount; or

(iii) if the Adjustment Amount is zero, no party shall make any payments pursuant to this paragraph (f).

The Initial Purchase Price, *plus* or *minus*, as applicable, the Adjustment Amount, shall be referred to herein as the "Purchase Price."

SECTION 1.05. *Escrow*. At the Closing, the Purchaser shall deduct the Escrow Amount from the Initial Purchase Price and deposit such amount in an account (the "Escrow Account") to be established by the Purchaser and the Seller Representative with the Escrow Agent pursuant to the terms of an Escrow Agreement, in the form attached as Exhibit D hereto (the "Escrow Agreement"), in order to provide security for the indemnification obligations of the Sellers hereunder. The Escrow Account shall be administered in accordance with the terms and provisions of the Escrow Agreement. Each of the Purchaser and the Seller Representative shall give appropriate written instructions to the Escrow Agent, which meet the requirements set forth in the Escrow Agreement, directing the Escrow Agent to disburse the amounts held in the Escrow Account as and when required in accordance with the provisions of the Escrow Agreement.

SECTION 1.06. *Withholding*. Each of the Purchaser, the Seller Representative, the Company, any Affiliate of the foregoing parties, or the Escrow Agent, as applicable, shall be entitled to deduct and withhold from the amounts payable under this Agreement such amounts as may be required to be deducted and withheld under the Code and any other applicable Tax Laws (which shall include payments made for the benefit of the Class P Common Unit Holders under this Agreement or the Redemption Agreement unless the Sellers provide evidence reasonably acceptable to Purchaser that an election under Section 83(b) of the Code was filed with respect to the applicable Class P Common Unit Holder). To the extent that amounts are so deducted and withheld, such deducted and withheld amounts (a) shall be remitted by the withholding party, as applicable, to the applicable Governmental Authority within the time and in the manner required by applicable Law and (b) shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

ARTICLE II
CLOSING

SECTION 2.01. *Closing.* Upon the terms and subject to the conditions set forth in this Agreement, the closing of the purchase and sale of the Securities pursuant to this Agreement (the "Closing") shall take place at the offices of Baker Botts L.L.P., 2001 Ross Avenue, Dallas, Texas 75201 (or, if the parties so elect, may take place by exchange of executed documents by Electronic Transmission without the holding of an in-person meeting) (a) as promptly as practicable following, but in no event later than 9:00 a.m., Central time, on the second Business Day after the satisfaction (or, to the extent permitted, waiver) of the conditions to the obligations of the parties set forth in Article X (other than those conditions which by their terms are to be satisfied or waived through the execution and delivery of agreements or other documents or the payment of funds at the Closing) or (b) at such other time and date as shall be mutually agreed upon by the Purchaser and the Seller Representative. The date on which the Closing occurs in accordance with this Section 2.01 is referred to in this Agreement as the "Closing Date."

SECTION 2.02. *Closing Payments*. At the Closing, the Purchaser shall:

(a) pay to the Seller Representative, for the account of the Sellers and the Class P Common Unit Holders (other than Horn and Cobb), an amount in cash, by wire transfer of immediately available funds (to such account as is designated in writing by the Seller Representative at least two Business Days prior to the Closing Date), equal to (i) the Initial Purchase Price, *minus* (ii) the Escrow Amount;

(b) pay to the Escrow Agent, an amount in cash, by wire transfer of immediately available funds (to such account as is designated in the Escrow Agreement), equal to the Escrow Amount; and

(c) repay, or cause to be repaid, all Closing Indebtedness in accordance with the instructions set forth in the Payoff Letters.

The parties acknowledge that the Closing Indebtedness to be repaid pursuant to paragraph (c) above represents obligations of the Target Companies incurred prior to the Closing Date, and agree that, after giving effect to the repayment thereof, none of the Acquired Companies shall have any Indebtedness as of the Closing Date. The payment of such Indebtedness by the Purchaser on behalf of the Target Companies is being made solely for the convenience of the parties and should not be construed to imply that the Purchaser has assumed or has otherwise become directly responsible for such Indebtedness or any obligations arising under the documents relating thereto.

SECTION 2.03. *Deliveries by the Sellers*. At the Closing, the Sellers shall deliver, or cause to be delivered, to the Purchaser each of the following:

(a) in the case of Original CRS, Cobb and Horn, a counterpart of the Assignment and Assumption Agreement, dated as of the Closing Date (the "Assignment and Assumption Agreement"), with respect to the sale, assignment, transfer and delivery of the Direct Equity Interests, in the appropriate form included in Exhibit E hereto duly executed by Original CRS or Horn, as applicable, and the Company;

(b) in the case of the E Sellers, one or more certificates evidencing all of the Blocker Shares (other than any Redeemed Blocker Shares), duly endorsed in blank or accompanied by stock powers duly executed in blank, in proper form for transfer to the Purchaser;

(c) in the case of Cobb and Bon Accord, a counterpart of the Assignment and Assumption Agreement with respect to the sale, assignment, transfer and delivery of the Pierpont Interests in the appropriate form included in Exhibit E hereto, duly executed by Cobb or Bon Accord (as applicable) and Pierpont;

(d) a counterpart of the Escrow Agreement, dated as of the Closing Date, duly executed by the Seller Representative, on behalf of the Sellers;

(e) a certificate, dated as of the Closing Date, duly executed by an authorized officer of the Company, to the effect set forth in Section 10.02(a) and Section 10.02(b);

(f) a certificate, dated as of the Closing Date, duly executed by (i) in the case of each Seller that is an Entity, a duly authorized officer of such Seller and (ii) in the case of each Seller that is an individual, such individual, to the effect set forth in Section 10.02(a) and Section 10.02(b);

(g) letters of resignation from each officer, director or manager of (or person holding a similar position with) each Acquired Company, which letters (i) shall evidence the resignation, effective as of the Closing, of each such individual from such position as an officer, director or manager (and any similar position) with any Acquired Company and (ii) in the case of any such officer, director or manager (other than Cobb and Horn) of any Acquired Company who is not a Continuing Employee shall include an unconditional release of all Claims of any nature whatsoever (other than claims arising under any Indemnification Agreement, or in accordance with the Organizational Documents of the Acquired Companies as in effect as of the date hereof) that each such officer, director or manager has or may in the future have against any Acquired Company arising out of, in connection with or with respect to his or her service as an officer, director or manager of an Acquired Company;

(h) evidence reasonably satisfactory to the Purchaser that the severance, management, consulting or similar Contracts to be terminated pursuant to Section 8.04(e) or 8.13(b) have been terminated;

(i) a certificate duly executed by the Secretary of the Company certifying (i) that the resolutions of the Board (as defined in the Company LLC Agreement) of the Company authorizing and approving the execution, delivery and performance of this Agreement by the Company have been duly adopted and are in full force and effect and have not been amended, modified or rescinded and (ii) that the officers of the Company executing this Agreement are duly authorized to execute the same;

(j) a certificate of a duly authorized officer of each Seller that is an Entity certifying (i) that resolutions of the board of directors or similar governing body of such Seller authorizing and approving the execution, delivery and performance of this Agreement by such Seller have been duly adopted and are in full force and effect and have not been amended, modified or rescinded and (ii) that the authorized officers of each such Seller executing this Agreement are duly authorized to execute the same;

(k) certificates from the Secretary of State of the applicable state of formation, dated no later than five Business Days prior to the Closing Date, confirming the existence and good standing of (i) each of the Sellers that is an Entity and (ii) each of the Acquired Companies;

(l) certificates from the Secretary of State of each state in which (i) the Blocker Companies or (ii) any of the Target Companies is registered or qualified to conduct business, dated no later than five Business Days prior to the Closing Date, confirming the registration or qualification and good standing of each such Entity; and

(m) from each Seller, a certificate complying with the provisions of Section 1445 of the Code to the effect that such Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

SECTION 2.04. *Deliveries by the Purchaser*. At the Closing, the Purchaser shall deliver, or cause to be delivered, to the Sellers each of the following:

(a) a counterpart of the Escrow Agreement, dated as of the Closing Date, duly executed by the Purchaser;

(b) a certificate, dated as of the Closing Date, duly executed by an authorized officer of the Purchaser, to the effect set forth in Section 10.03(a) and Section 10.03(b);

(c) a counterpart of each of the Assignment and Assumption Agreements with respect to the sale, assignment, transfer and delivery of the Direct Equity Interests and the Pierpont Interests in the appropriate forms included in Exhibit E hereto, duly executed by the Purchaser;

(d) a certificate of the Secretary of the Purchaser certifying (i) that the resolutions of the managers of the Purchaser authorizing and approving the execution, delivery and performance of this Agreement by the Purchaser have been duly adopted and are in full force and effect and have not been amended, modified or rescinded and (ii) that the officers of the Purchaser executing this Agreement are duly authorized to execute the same; and

(e) a certificate from the Secretary of State of the State of Delaware, dated no later than five Business Days prior to the Closing Date, confirming the existence and good standing of the Purchaser.

ARTICLE III
REPRESENTATIONS AND WARRANTIES
REGARDING THE SELLERS

Except as provided in the Seller Disclosure Schedule, (i) each of the E Sellers jointly and severally represents and warrants to the Purchaser with respect to all of the E Sellers (but not with respect to any other Seller), and (ii) each of the Other Sellers severally represents and warrants to the Purchaser, with respect to itself (and not with respect to any other Seller), on and as of the date of this Agreement and the Closing Date, as follows:

SECTION 3.01. *Organization; Power and Authority.*

(a) In the case of a Seller that is an Entity, such Seller (i) is a limited partnership or limited liability company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and (ii) has all necessary partnership, limited liability company and other power and authority to (A) own the Securities owned by it, (B) conduct its business and operations as currently conducted and (C) execute and deliver this Agreement, perform its obligations hereunder and consummate the transactions contemplated hereby.

(b) In the case of a Seller that is an individual, such Seller has all requisite power and authority to (i) own the Securities owned by him or her and (ii) execute and deliver this Agreement, perform his or her obligations hereunder and consummate the transactions contemplated hereby.

SECTION 3.02. *Authorization; Execution and Validity.*

(a) In the case of a Seller that is an Entity, such Seller has taken all partnership or limited liability company actions or proceedings required to be taken by or on the part of such Seller to authorize and permit the execution and delivery by such Seller of this Agreement and each other agreement, document, instrument and certificate required to be executed or delivered by such Seller pursuant to this Agreement (the "Seller Documents"), the performance by such Seller of its obligations hereunder and thereunder and the consummation by such Seller of the transactions contemplated hereby and thereby.

(b) This Agreement has been, and, at the Closing, the Seller Documents will be, duly and validly executed and delivered by such Seller and, assuming the due authorization, execution and delivery by the other parties hereto or thereto, each of this Agreement and the Seller Documents constitutes or will constitute a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, subject to the exception that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity) (the "Enforceability Exceptions").

SECTION 3.03. *Noncontravention.* None of the execution and delivery by such Seller of this Agreement or the Seller Documents, the performance by such Seller of its obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (i) in the case of a Seller that is an Entity, conflicts or will conflict with, or results or will result in a violation or breach of or a default under any term or provision of the Organizational Documents of such Seller, (ii) conflicts or will conflict with, results or will result in any violation or breach of, or constitutes or will constitute a default under, any term or provision of any material Contract or other material instrument or document to which such Seller is a party or by which it or any of its properties or assets are bound, (iii) results or will result in the imposition of any Lien, Claim or other encumbrance upon the Securities owned by such Seller or (iv) assuming the filings and Consents referred to in Section 3.04 are made or obtained, conflicts or will conflict with, or results or will result in the violation of, any Law or Order applicable to such Seller or any of its properties or assets.

SECTION 3.04. *No Governmental Consent or Approval Required.* No Consent, Permit or Order of, or declaration, registration, qualification, designation or filing to or with, any Governmental Authority for or on behalf of such Seller is required for or in connection with the execution and delivery by such Seller of this Agreement or the Seller Documents, the performance by such Seller of its obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, other than the filing by the applicable Seller or the Company or Proppants, as applicable, of a notification and report form with the Federal Trade Commission (the "FTC") and the Antitrust Division of the United States Department of Justice (the "DOJ") under the HSR Act and the expiration or termination of any applicable "waiting period" thereunder.

SECTION 3.05. *Title.* Such Seller holds, is the record and a beneficial owner of and has good and valid title to the Securities set forth opposite the name of such Seller on Schedule 1.01 hereto, free and clear of any Liens, Claims or encumbrances (including any right of first refusal, right of first option or other right to purchase or any restriction on transfer or similar right or restriction for the benefit of any Person but excluding (i) Liens, Claims or encumbrances set forth on Section 3.05 of the Seller Disclosure Schedule that will be released, waived or otherwise terminated in connection with the Closing, (ii) restrictions on transfer under applicable federal and state securities laws and (iii) restrictions on transfer arising under the Company LLC Agreement). Except for this Agreement, there is no Contract pursuant to which such Seller has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any of the Securities set forth opposite the name of such Seller on Schedule 1.01 hereto or made any other commitment or

undertaking that could reasonably be expected to interfere with the performance of its obligations under this Agreement or the Seller Documents. By virtue of the delivery to the Purchaser of the applicable agreement or certificates described in Section 2.03(a), (b) or (c) (as applicable), at the Closing, such Seller will transfer good and valid title to such Securities to the Purchaser, free and clear of any Liens, Claims or encumbrances, other than restrictions on transfer under applicable federal or state securities laws.

SECTION 3.06. *Litigation.* There are no Legal Proceedings pending or, to such Seller's Knowledge, threatened against such Seller or any of its Affiliates or to which such Seller or any of its Affiliates is otherwise subject by or before any Governmental Authority arising from or potentially affecting this Agreement or the Seller Documents or the transactions contemplated hereby or thereby. Such Seller is not subject to any Order arising from or potentially affecting this Agreement or the Seller Documents or the transactions contemplated hereby or thereby.

SECTION 3.07. *Tax Matters.* In the case of each of Horn, Original CRS, Bon Accord and Cobb (which, in the case of Bon Accord and Cobb, own certain equity interests in the Company indirectly through Pierpont), such Seller timely reports its distributive share of the Company's income, gain and losses on its Tax Return and has paid all Taxes due with respect to such income, gain and losses. Such Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

SECTION 3.08. *Excise Taxes.* The consummation of the transactions contemplated by this Agreement will not give rise to an excise Tax under Section 4975 or 4978 of the Code.

SECTION 3.09. *No Brokers.* Except as set forth in Section 3.09 of the Seller Disclosure Schedule, no agent, broker, finder, investment or commercial banker or other Person engaged by or acting on behalf of such Seller or any of its Affiliates in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated hereby is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement or any such transactions. The fees or other commissions described in Section 3.09 of the Seller Disclosure Schedule shall be paid for or on behalf of the Sellers at the Closing, such that none of the Target Companies or the Purchaser shall have any liability or responsibility with respect thereto.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES REGARDING THE BLOCKER COMPANIES

Except as provided in the Seller Disclosure Schedule, each of the E Sellers jointly and severally represents and warrants to the Purchaser, with respect to all of the Blocker Companies, on and as of the date of this Agreement and the Closing Date, as follows:

SECTION 4.01. *Organization; Power and Authority.* Each Blocker Company (i) is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and (ii) has all requisite corporate power and authority to own the Equity Interests in the Company owned by it and to conduct any related activities. Each Blocker Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties or assets makes such qualification or licensing necessary, except where the failure to be so qualified or licensed has not had and would not reasonably be expected to have a material adverse effect on such Blocker Company. The E Sellers have made available to the Purchaser complete and correct copies of the Organizational Documents of each Blocker Company, in each case as amended through the date of this Agreement.

SECTION 4.02. *Noncontravention.* None of the execution and delivery by the E Sellers of this Agreement or any of the Seller Documents, the performance by the E Sellers of their obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (i) conflicts or will conflict with, or results or will result in any violation or breach of or default under, any term or provision of the Organizational Documents of any Blocker Company, (ii) conflicts or will conflict with, results or will result in in any violation or breach of, constitutes or will constitute a default under, any term or provision of any material Contract or Permit or other material instrument or document to which any Blocker Company is a party or by which any Blocker Company or their respective properties or assets are bound or (iii) assuming the filings and Consents referred to in Section 4.03 are made or obtained, conflicts or will conflict with, or results or will result in the violation of, any Law or Order applicable to any Blocker Company or its properties or assets.

SECTION 4.03. *No Governmental Consent or Approval Required.* No Consent, Permit or Order of, declaration to, or registration, qualification, designation or filing with, any Governmental Authority on the part of any Blocker Company is required for or in connection with the execution and delivery by the E Sellers of this Agreement or the Seller Documents, the performance by the E Sellers of their obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, other than the filing by the applicable Sellers or the Company or Proppants or the Purchaser, as applicable, of a notification and report form with the FTC and the DOJ under the HSR Act and the expiration or termination of any applicable "waiting period" thereunder.

SECTION 4.04. *Capitalization.* The authorized, issued and outstanding Equity Interests of each Blocker Company as of the date hereof are set forth opposite the name of such Blocker Company in Section 4.04 of the Seller Disclosure Schedule. As of the Closing Date, the authorized, issued and outstanding Equity Interests of each Blocker Company will be as set forth opposite the name of such Blocker Company in Section 4.04 of the Seller Disclosure Schedule, except that the Redeemed Blocker Shares will no longer be issued or outstanding. The Blocker Shares issued by each Blocker Company constitute all of the issued and outstanding Equity Interests in such Blocker Company as of the date hereof, and as of the Closing Date, the Blocker Shares (other than any Redeemed Blocker Shares) will constitute all of the issued and outstanding Equity Interests in such Blocker Company. The issued and outstanding Blocker Shares issued by each Blocker Company have been duly authorized by all necessary corporate action on the part of such Blocker Company, have been validly issued and are fully paid and nonassessable. None of the outstanding Blocker Shares of each Blocker Company was issued in violation of any preemptive rights. There are no declared but unpaid dividends in respect of any Blocker Shares issued by each Blocker Company. Except pursuant to this Agreement with respect to the redemption of the Redeemed Blocker Shares, there are no outstanding options, warrants, calls, rights, convertible securities or other agreements or commitments of any character pursuant to which each Blocker Company is or will be obligated to issue or sell any issued or unissued Equity Interests in such Blocker Company or any securities convertible or exchangeable into any such Equity Interests. No Blocker Company has granted or authorized, and is not aware of the grant or authorization by any Person of, any right of first refusal, right of first option or other right to purchase or any restriction on transfer or similar right or restriction, whether by Contract or otherwise, with respect to the outstanding Blocker Shares of such Blocker Company. There are no outstanding stock appreciation rights or other rights issued by any Blocker Company that are linked in any way to the price of any Equity Interests in such Blocker Company or the value of such Blocker Company or any part thereof.

SECTION 4.05. *Title.* Each Blocker Company holds, is the record and a beneficial owner of and has good and valid title to the Equity Interests in the Company set forth opposite the name of such Blocker Company in Section 4.05 of the Seller Disclosure Schedule, free and clear of any Liens, Claims or encumbrances (including any right of first refusal, right of first option or other right to purchase or any restriction on transfer or similar right or restriction for the benefit of any Person but excluding (i) restrictions on transfer under applicable federal and state securities laws and (ii) restrictions on transfer arising under the Company LLC Agreement). Except for this Agreement, there is no Contract pursuant to which any Blocker Company has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any of the Equity Interests in the Company set forth opposite the name of such Blocker Company in Section 4.05 of the Seller Disclosure Schedule or made any other commitment or undertaking that could reasonably be expected to interfere with its continued ownership of such Equity Interests.

SECTION 4.06. *Operations; No Liabilities or Obligations.*

(a) Since the date of its incorporation, no Blocker Company has carried on any business or conducted any operations other than those relating to acquiring and holding Equity Interests in the Company or has owned or leased any properties, assets or rights other than its Equity Interests in the Company.

(b) Except as set forth in Section 4.06(b) of the Seller Disclosure Schedule, and other than in connection with the redemption of the Redeemed Blocker Shares, since the date of incorporation of each Blocker Company, no Blocker Company has entered into or been a party to or bound by any Contract, other than the Company LLC Agreement.

(c) Since the date of incorporation of each Blocker Company, no Blocker Company has had any employees or any obligation to compensate any person for services rendered in connection with the operation of such Blocker Company.

(d) Except for liabilities for Taxes that do not give rise to a violation of the representations and warranties contained in Section 4.07, no Blocker Company has any debts, liabilities or obligations of any nature, either accrued, contingent, unasserted or otherwise (whether or not required to be reflected on a balance sheet in accordance with GAAP).

(e) Except as set forth in Section 4.06(e) of the Seller Disclosure Schedule, no Blocker Company owns any assets other than the Equity Interests in the Company set forth opposite the name of each such Blocker Company on Schedule 1.01.

SECTION 4.07. *Tax Matters.* Except as set forth in Section 4.07 of the Seller Disclosure Schedule:

(a) Each Blocker Company has timely filed, or has caused to be timely filed on its behalf (after giving effect to extensions), all income and other material Tax Returns required to be filed by or with respect to it and all such Tax Returns are true, complete and accurate in all material respects. All income and other material Taxes of each Blocker Company that are due and payable (whether or not shown as due and payable on any such Tax Return) have been timely paid in full.

(b) All material Taxes required to have been withheld or collected and paid over in connection with amounts paid or owing to or from any employee, independent contractor or any other third party have been withheld or collected and paid to the appropriate Taxing Authority.

(c) There is no outstanding audit or examination concerning Taxes of any Blocker Company and no Blocker Company has received any written notice that such an audit or examination is pending or threatened.

(d) All deficiencies asserted or assessments made as a result of any examination by any Taxing Authority of the Tax Returns of any Blocker Company have been fully paid and no issue has been raised by a Taxing Authority in any prior examination of any such Blocker Company which, by application of the same or similar principles, could reasonably be expected to result in a proposed deficiency for any subsequent taxable period.

(e) There has been no waiver of any statute of limitations in respect of Taxes of any Blocker Company that remains in effect.

(f) No Blocker Company is subject to any Liens, other than Permitted Liens, imposed on any of its assets or properties as a result of the failure of any such Blocker Company to pay any material amount of Taxes that are due and payable.

(g) No Blocker Company (i) is party to or bound by any Tax sharing agreement, Tax indemnity or similar agreement with respect to Taxes, other than commercial agreements not primarily related to Taxes, (ii) is subject to any private letter ruling of the IRS or any comparable rulings of any Governmental Authority, (iii) is bound by or has agreed to make (other than changes required as a result of the transactions contemplated herein) any adjustments pursuant to Section 481(a) of the Code or any similar provision of applicable Law nor has any knowledge that any Governmental Authority has proposed any such adjustment, nor has any application pending with any Governmental Authority requesting permission for any changes in accounting methods that relate to the Company, (iv) has executed or entered into a closing agreement pursuant to Section 7121 of the Code or any similar provision of applicable Law, (v) has ever been a member of an "affiliated group" within the meaning of Section 1504(a) of the Code filing a consolidated federal income Tax Return, (vi) has distributed stock of another corporation, or has had its stock distributed by another corporation, in a transaction that was governed, or purported or intended to be governed, in whole or in part, by Section 355 of the Code or any similar provision of state, local or foreign Tax Law, (vii) has participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b), (viii) has, nor has ever had, a permanent establishment or otherwise conducted business in any country other than the country of its organization, (ix) has granted any Person any power of attorney that is currently in force with respect to any material Tax matter or (x) has any liability for the unpaid Taxes of any other Person as a transferee or successor or under Treasury Regulation Section 1.1502-6 or any other comparable provision of state, local or foreign Tax Law.

(h) No Blocker Company is required to include an item of income, or exclude an item of deduction, in any period beginning after the Closing Date as a result of (i) a sale governed by Section 453 of the Code (or analogous provision of state or local Law) closed prior to the Closing Date; (ii) any sale treated as an open transaction for any income Tax purposes closed prior to the Closing Date; (iii) any prepaid amounts received prior to the Closing Date (excluding those prepaid amounts associated with the Green Field Deferred Revenue or the BH Deferred Revenue); or (iv) an election under Section 108(i) of the Code.

(i) Since December 31, 2013, no Blocker Company has (i) changed or revoked any material Tax election, (ii) made any material election (other than Tax elections wholly consistent with past practices of such Blocker Company), (iii) settled or compromised any material Tax Claim or liability, (iv) made a change to (or made a request to any Taxing Authority to change) any aspect of the method of accounting used for Tax purposes, (v) waived or extended any statute of limitations in respect of Taxes or period within which an assessment or reassessment of Taxes may be issued, (vi) filed any amended Tax Return or (vii) prepared or filed any Tax Return unless such Tax Return was prepared in a manner consistent with past practice.

SECTION 4.08. *Litigation.* Since the date of incorporation of each Blocker Company, there have been no Legal Proceedings pending or, to the Knowledge of the applicable E Seller, threatened against such Blocker Company.

SECTION 4.09. *Related Party Transactions.* No E Seller and no officer, director or employee of any of the Blocker Companies, and no family member, relative or Affiliate of any such Person is a party to any Contract with a Blocker Company.

SECTION 4.10. *Books and Records.* The E Sellers have made available to the Purchaser complete and correct copies of the minutes of all meetings of the stockholders (or written consents in lieu of such meetings, as applicable) of each Blocker Company and the Board of Directors of each Blocker Company and each committee thereof since the date of incorporation thereof.

SECTION 4.11. *Indebtedness.* No Blocker Company has any outstanding Indebtedness. There are no outstanding Guarantees (or any similar instruments or Contracts) of any Indebtedness of any other Person that have been issued by any Blocker Company.

SECTION 4.12. *No Brokers.* No agent, broker, finder, investment or commercial banker or other Person engaged by or acting on behalf of any Blocker Company or its Affiliates in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated hereby is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement or any such transactions for which any Blocker Company, any Target Company or the Purchaser shall have any liability or responsibility.

ARTICLE V
REPRESENTATIONS AND WARRANTIES
REGARDING PIERPONT

Except as provided in the Seller Disclosure Schedule, Cobb and Bon Accord hereby jointly and severally represent and warrant to the Purchaser, with respect to Pierpont, on and as of the date of this Agreement and the Closing Date, as follows:

SECTION 5.01. *Organization; Power and Authority.* Pierpont (i) is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Oklahoma and (ii) has all requisite limited liability company power and authority to own the Equity Interests in the Company owned by it and to conduct any related activities. Pierpont is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties or assets makes such qualification or licensing necessary, except where the failure to be so qualified or licensed has not had and would not reasonably be expected to have a material adverse effect on Pierpont. Cobb has made available to the Purchaser complete and correct copies of the Organizational Documents of Pierpont, in each case as amended through the date of this Agreement. In addition, Cobb has made available to the Purchaser complete and correct copies of the minutes of all meetings of the members and managers of Pierpont (or written consents in lieu of such meetings, as applicable) and each committee thereof since the date of consummation of the Atlas Transaction.

SECTION 5.02. *Noncontravention.* None of the execution and delivery by Cobb and Bon Accord of this Agreement or any of the Seller Documents, the performance by Cobb and Bon Accord of his or its obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (i) conflicts or will conflict with, or results or will result in any violation or breach of or default under, any term or provision of the Organizational Documents of Pierpont, (ii) conflicts or will conflict with, results or will result in in any violation or breach of, constitutes or will constitute a default under, any term or provision of any material Contract or Permit or other material instrument or document to which Pierpont is a party or by which Pierpont or its respective properties or assets are bound or (iii) assuming the filings and Consents referred to in Section 5.03 are made or obtained, conflicts or will conflict with, or results or will result in the violation of, any Law or Order applicable to Pierpont or its properties or assets.

SECTION 5.03. *No Governmental Consent or Approval Required.* No Consent, Permit or Order of, declaration to, or registration, qualification, designation or filing with, any Governmental Authority on the part of Pierpont is required for or in connection with the execution and delivery by Cobb and Bon Accord of this Agreement or the Seller Documents, the performance by Cobb and Bon Accord of his or its obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, other than the filing by the applicable Sellers or the Company or Proppants, as applicable, of a notification and report form with the FTC and the DOJ under the HSR Act and the expiration or termination of any applicable "waiting period" thereunder.

SECTION 5.04. *Capitalization.* The authorized, issued and outstanding Equity Interests of Pierpont are set forth in Section 5.04 of the Seller Disclosure Schedule. The Pierpont Interests constitute all of the issued and outstanding Equity Interests in Pierpont. The Pierpont Interests have been duly authorized by all necessary limited liability company action on the part of Pierpont, have been validly issued and are not subject to any unsatisfied capital contribution obligations. None of the outstanding Pierpont Interests was issued in violation of any preemptive rights. There are no declared but unpaid distributions in respect of any Pierpont Interests. There are no outstanding options, warrants, calls, rights, convertible securities or other agreements or commitments of any character pursuant to which Pierpont is or will be obligated to issue or sell any issued or unissued Equity Interests in Pierpont or any securities convertible or exchangeable into any such Equity Interests. Pierpont has not granted or authorized, and is not aware of the grant or authorization by any Person of, any right of first refusal, right of first option or other right to purchase or any restriction on transfer or similar right or restriction, whether by Contract or otherwise, with respect to the outstanding Pierpont Interests. There are no outstanding membership interest appreciation rights or other rights issued by Pierpont that are linked in any way to the price of any Equity Interests in Pierpont or the value of Pierpont or any part thereof.

SECTION 5.05. *Title.* Pierpont holds, is the record and a beneficial owner of and has good and valid title to the Equity Interests in the Company set forth opposite the name of Pierpont in Section 5.05 of the Seller Disclosure Schedule, free and clear of any Liens, Claims or encumbrances (including any right of first refusal, right of first option or other right to purchase or any restriction on transfer or similar right or restriction for the benefit of any Person, but excluding (i) restrictions on transfer under applicable federal and state securities laws and (ii) restrictions on transfer arising under the Company LLC Agreement). Except for this Agreement, there is no Contract pursuant to which Pierpont has, directly or indirectly, granted any option, warrant or other right to any Person to acquire any of the Equity Interests in the Company set forth opposite the name of Pierpont in Section 5.05 of the Seller Disclosure Schedule or made any other commitment or undertaking that could reasonably be expected to interfere with its continued ownership of such Equity Interests.

SECTION 5.06. *Operations; No Liabilities or Obligations.*

(a) Except as set forth in Section 5.06(a) of the Seller Disclosure Schedule, since the date of consummation of the Atlas Transaction, Pierpont has not carried on any business or conducted any operations other than those relating to acquiring and holding Equity Interests in the Company or has owned or leased any properties, assets or rights other than its Equity Interests in the Company.

(b) Except as set forth in Section 5.06(b) of the Seller Disclosure Schedule, since the date of consummation of the Atlas Transaction, Pierpont has not entered into or been a party to or bound by any Contract, other than the Company LLC Agreement.

(c) Since the date of consummation of the Atlas Transaction, Pierpont has not had any employees or any obligation to compensate any person for services rendered in connection with its operations.

(d) Except for liabilities for Taxes that do not give rise to a violation of the representations and warranties contained in Section 5.07, Pierpont does not have any debts, liabilities or obligations of any nature, either accrued, contingent, unasserted or otherwise (whether or not required to be reflected on a balance sheet in accordance with GAAP).

(e) Except as set forth in Section 5.06(e) of the Seller Disclosure Schedule, Pierpont does not own any assets other than the Equity Interests in the Company set forth opposite its name on Schedule 1.01.

SECTION 5.07. *Tax Matters.* Except as set forth in Section 5.07 of the Seller Disclosure Schedule:

(a) Pierpont has timely filed, or has caused to be timely filed on its behalf (after giving effect to extensions), all income and other material Tax Returns required to be filed by or with respect to it and all such Tax Returns are true, complete and accurate in all material respects. All income and other material Taxes of Pierpont that are due and payable (whether or not shown as due and payable on any such Tax Return) have been timely paid in full.

(b) All material Taxes required to have been withheld or collected and paid over in connection with amounts paid or owing to or from any employee, independent contractor or any other third party have been withheld or collected and paid to the appropriate Taxing Authority.

(c) There is no outstanding audit or examination concerning Taxes of Pierpont and Pierpont has not received any written notice that such an audit or examination is pending or threatened.

(d) All deficiencies asserted or assessments made as a result of any examination by any Taxing Authority of the Tax Returns of Pierpont have been fully paid and no issue has been raised by a Taxing Authority in any prior examination of Pierpont which, by application of the same or similar principles, could reasonably be expected to result in a proposed deficiency for any subsequent taxable period.

(e) There has been no waiver of any statute of limitations in respect of Taxes of Pierpont that remains in effect.

(f) Pierpont is not subject to any Liens, other than Permitted Liens, imposed on any of its assets or properties as a result of the failure of Pierpont to pay any material amount of Taxes that are due and payable.

(g) Pierpont (i) is not party to or bound by any Tax sharing agreement, Tax indemnity or similar agreement with respect to Taxes, other than commercial agreements not primarily related to Taxes, (ii) is not subject to any private letter ruling of the IRS or any comparable rulings of any Governmental Authority, (iii) is not bound by or has agreed to or is required to make (other than changes required as a result of the transactions contemplated herein) any adjustments pursuant to Section 481(a) of the Code or any similar provision of applicable Law nor has any knowledge that any Governmental Authority has proposed any such adjustment, nor has any application pending with any Governmental Authority requesting permission for any changes in accounting methods that relate to the Company, (iv) has not executed or entered into a closing agreement pursuant to Section 7121 of the Code or any similar provision of applicable Law, (v) has not participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b), (vi) does not have, and has never had, a permanent establishment or otherwise conducted business in any country other than the country of its organization, (vii) has not granted any Person any power of attorney that is currently in force with respect to any material Tax matter or (viii) has no liability for the unpaid Taxes of any other Person as a transferee or successor.

(h) Pierpont (and its owners) are not required to report or include an item of income, or exclude an item of deduction, in any period beginning after the Closing Date as a result of (i) a sale governed by Section 453 of the Code (or analogous provision of state or local Law) closed prior to the Closing Date; (ii) an sale treated as an open transaction for any income tax purposes closed prior to the Closing Date; (iii) any prepaid amounts received prior to the Closing Date (excluding those prepaid amounts associated with the Green Field Deferred Revenue or the BH Deferred Revenue); or (iv) an election under Section 108(i) of the Code.

(i) Since December 31, 2013, Pierpont has not (i) changed or revoked any material Tax election, (ii) made any material election (other than Tax elections wholly consistent with past practices of Pierpont), (iii) settled or compromised any material Tax Claim or liability, (iv) made a change to (or made a request to any Taxing Authority to change) any aspect of the method of accounting used for Tax purposes, (v) waived or extended any statute of limitations in respect of Taxes or period within which an assessment or reassessment of Taxes may be issued, (vi) filed any amended Tax Return or (vii) prepared or filed any Tax Return unless such Tax Return was prepared in a manner consistent with past practice.

(j) Pierpont is, and has been at all times since the date of its formation, treated and properly classified as a partnership for all federal income Tax purposes.

SECTION 5.08. *Litigation(a)* . Since the date of consummation of the Atlas Transaction, there have been no Legal Proceedings pending or, to the Knowledge of Cobb and Bon Accord, threatened against Pierpont. Except as set forth in Section 5.08 of the Seller Disclosure Schedule, no Claims (whether or not subsequently settled or otherwise resolved) have been made or, to the Knowledge of Cobb and Bon Accord, threatened at any time against Pierpont or its Affiliates under the Atlas Purchase Agreement or in connection with the Atlas Transaction and, to the Knowledge of Cobb and Bon Accord, there is no reasonable basis for any such Claims.

SECTION 5.09. *Related Party Transactions.* Except as set forth in Section 5.09 of the Seller Disclosure Schedule, neither Cobb, nor any officer, member, manager or employee of Pierpont, nor any family member, relative or Affiliate of any such Person is a party to any Contract with Pierpont.

SECTION 5.10. *Books and Records.*

(a) The books of account, the membership interest ledger and other records of Pierpont, all of which have been made available to the Purchaser, are complete and correct in all material respects, represent actual, bona fide transactions, and have been maintained in accordance with sound business practices and applicable Law.

(b) The minute books, including written consents in lieu of meetings of members and managers, as applicable, of Pierpont contain accurate and complete records of all material limited liability company actions taken by the members and managers of Pierpont since the date of its formation. At the Closing, all such books and records will be in the possession of the Company.

SECTION 5.11. *Indebtedness.* Except as set forth in Section 5.11 of the Seller Disclosure Schedule, Pierpont does not have any outstanding Indebtedness. There are no outstanding Guarantees (or any similar instruments or Contracts) of any Indebtedness of any other Person that have been issued by Pierpont.

SECTION 5.12. *No Brokers.* No agent, broker, finder, investment or commercial banker or other Person engaged by or acting on behalf of Pierpont or its Affiliates in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated hereby is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement or any such transactions for which Pierpont, any Target Company or the Purchaser shall have any liability or responsibility.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES
REGARDING THE TARGET COMPANIES

Except as provided in the Company Disclosure Schedule, each of the Sellers and the Company hereby represents and warrants to the Purchaser, on and as of the date of this Agreement and the Closing Date, as follows:

SECTION 6.01. *Organization; Power and Authority.* The Company (i) is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware and (ii) has all requisite limited liability company power and authority to own, lease and operate its properties and assets and to conduct its business and operations as currently conducted. The Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties or assets makes such qualification or licensing necessary, except where the failure to be so qualified or licensed has not had and would not reasonably be expected to have a Material Adverse Effect. A list of the jurisdictions in which the Company is so qualified or licensed is set forth in Section 6.01 of the Company Disclosure Schedule. The Company has made available to the Purchaser complete and correct copies of the Organizational Documents of the Company, in each case as amended through the date of this Agreement.

SECTION 6.02. *Authorization; Execution and Validity.*

(a) The Company has all necessary limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Company has taken all limited liability company actions or proceedings required to be taken by or on the part of or with respect to the Company to authorize and permit the execution and delivery by the Company of this Agreement and each other agreement, document, instrument and certificate required to be executed and delivered by the Company pursuant hereto (the "Company Documents"), the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby. This Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.

(b) This Agreement has been, and the Company Documents, at the Closing, will be, duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by each of the other parties hereto or thereto, each of this Agreement and the Company Documents constitutes or will constitute a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to the Enforceability Exceptions.

SECTION 6.03. *Noncontravention.* Except as set forth in Section 6.03 of the Company Disclosure Schedule, none of the execution and delivery by the Sellers or the Company of this Agreement, the Seller Documents or the Company Documents, the performance by the Sellers or the Company of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (i) conflicts or will conflict with, or results or will result in any violation or breach of, any term or provision of the Organizational Documents of the Target Companies, (ii) conflicts or will conflict in any material respect with, results or will result in in any material violation or material breach of, constitutes or will constitute a material default under, results or will result in a forfeiture, reduction or other modification of any material rights under or give rise to any material right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, any term or provision of any Contract or Permit or other instrument or document to which any of the Target Companies is a party or by which any it or its properties or assets are bound or (iii) conflicts or will conflict with in any material respect, or results or will result in any material violation of, any Law or Order applicable to any of the Target Companies or its respective properties or assets.

SECTION 6.04. *No Governmental Consent or Approval Required.* No material Consent, Permit or Order of, or material declaration, registration, qualification, designation or filing to or with, any Governmental Authority for or on behalf of any of the Target Companies is required for or in connection with the execution and delivery by the Company of this Agreement or the Company Documents, the performance by the Company of its obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, other than the filing by the applicable Sellers or the Company of a notification and report form with the FTC and the DOJ under the HSR Act and the expiration or termination of any applicable "waiting period" thereunder.

SECTION 6.05. *Capitalization of the Company.* The issued and outstanding Equity Interests in the Company consist of 46,350 Preferred Units, 900,000 Class C Common Units and 64,750 Class P Common Units (the "Outstanding Company Units") and no Preferred Units, Class C Common Units or Class P Common Units are held in the Company's treasury. The Outstanding Company Units have been duly authorized by all necessary limited liability company action on the part of the Company, have been validly issued and are not subject to any unsatisfied capital contribution obligations. The membership ledger and other limited liability company records of the Company reflect that all of the Outstanding Company Units are owned of record by the Sellers and the Blocker Companies. None of the Outstanding Company Units was issued in violation of any preemptive rights, and none of them is subject to vesting or forfeiture conditions or a right of repurchase by the Company. There are no declared but unpaid dividends in respect of any Equity Interests in the Company. Other than as provided for in the Company LLC Agreement, there are no outstanding options, warrants, calls, rights, convertible securities or other agreements or commitments of any character pursuant to which the Company is or will be obligated to issue or sell any issued or unissued Equity Interests in the Company or any securities convertible or exchangeable into any such Equity Interests. The Company has not granted or authorized, and is not aware of the grant or authorization by any Person of, any right of first refusal, right of first option or other right to purchase or any restriction on transfer or similar right or restriction, whether by Contract or otherwise, with respect to the Outstanding Company Units, except for any such right or restriction expressly provided for in (i) the Company LLC Agreement (which has been waived or otherwise modified so that it does not restrict or otherwise affect the consummation of the transactions contemplated hereby) and (ii) the grant or award agreements made available to the Purchaser pursuant to which the Company's Class P Common Units were granted. There are no outstanding stock appreciation rights or other rights issued by the Company that are linked in any way to the price of any Equity Interests in the Company or the value of the Company or any part thereof.

SECTION 6.06. *Subsidiaries.*

(a) Section 6.06(a) of the Company Disclosure Schedule sets forth (i) the name of each Subsidiary of the Company, (ii) the jurisdiction of incorporation or formation of each such Subsidiary, (iii) the authorized, issued and outstanding capital stock or other Equity Interests in each such Subsidiary and (iv) the names of the stockholders, equity holders or other holders of Equity Interests in each such Subsidiary. Except as set forth in Section 6.06(a) of the Company Disclosure Schedule, the Company does not own, directly or indirectly, or have voting rights with respect to, any capital stock or other Equity Interests in any Entity.

(b) No Subsidiary of the Company is organized as a corporation or, other than for tax purposes, a partnership. Each Subsidiary of the Company that is organized as a limited liability company (i) is a limited liability company duly formed, validly existing and in good standing under the Laws of its jurisdiction of formation and (ii) has all requisite limited liability company power and authority to own, lease and operate its properties and assets and to conduct its business and operations as currently conducted. Each Subsidiary of the Company is duly qualified or licensed to do business as a foreign limited liability company and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties or assets makes such qualification or licensing necessary, except where the failure to be so qualified or licensed has not had and would not reasonably be expected to have a Material Adverse Effect. A list of the jurisdictions in which each Subsidiary of the Company is so qualified or

licensed is set forth in Section 6.06(b) of the Company Disclosure Schedule. The Company has made available to the Purchaser complete and correct copies of the Organizational Documents of each Subsidiary of the Company, in each case as amended through the date of this Agreement.

(c) All of the issued and outstanding Equity Interests in each Subsidiary of the Company (i) have been duly authorized, (ii) are validly issued, (iii) are not subject to any unsatisfied capital contribution obligations and (iv) are owned by the Company, directly or indirectly, free and clear of any Liens, Claims or other encumbrances (other than (i) restrictions on transfer under the Organizational Documents of each such Subsidiary, (ii) under federal and state securities laws and (iii) as set forth in Section 6.06(c) of the Company Disclosure Schedule). None of the outstanding Equity Interests in any Subsidiary of the Company was issued in violation of any preemptive rights, and none of them is subject to vesting or forfeiture conditions or a right of repurchase by any Person. There are no outstanding options, warrants, calls, rights, convertible securities or other agreements or commitments of any character pursuant to which any Subsidiary of the Company is or will be obligated to issue or sell any issued or unissued Equity Interests in such Subsidiary or any securities convertible or exchangeable into any such Equity Interests. There are no outstanding stock appreciation rights or other rights issued by any Subsidiary of the Company that are linked in any way to the price of any Equity Interests in such Subsidiary of the value of such Subsidiary or any part thereof.

SECTION 6.07. *Financial Statements.* Attached as Section 6.07 of the Company Disclosure Schedule are (x) the audited consolidated balance sheets of the Company and its consolidated subsidiaries (or, in the case of dates and periods prior to May 2013, Proppants and its consolidated subsidiaries) as of December 31, 2012 and December 31, 2013 and the related audited consolidated statements of operations, changes in member's equity and cash flows of the Company and its consolidated subsidiaries (or Proppants and its consolidated subsidiaries) for the fiscal years then ended (the "Audited Financial Statements") and (y) the unaudited consolidated balance sheet of the Company and its consolidated subsidiaries as of September 30, 2014 (the "Latest Balance Sheet") and the related consolidated statements of income and cash flows of the Company for the nine-month period then ended (the "Latest Financial Statements" and together with the Audited Financial Statements, the "Financial Statements"). Each of the Financial Statements (i) is true and correct in all material respects, (ii) was derived from and has been prepared in all material respects in accordance with the underlying books and records of the Target Companies, (iii) has been prepared in accordance with GAAP consistently applied throughout the periods presented (except that the Latest Financial Statements lack footnote disclosures and other presentation items that are not required under GAAP in the case of interim financial statements) and (iv) presents fairly in all material respects the consolidated financial position, results of operations and cash flows of the Company and its consolidated subsidiaries as at the dates and for the periods indicated therein. In the case of the Latest Financial Statements, there were no changes in the method of application of the accounting policies of the Target Companies or changes in the method of applying their use of estimates as compared with the Audited Financial Statements.

SECTION 6.08. *Undisclosed Liabilities.* Except as accurately and fully reflected or reserved for on the Latest Balance Sheet or set forth on Section 6.08 of the Company Disclosure Schedule, the Target Companies have no material debts, liabilities or obligations of any nature, either accrued, contingent, unasserted or otherwise (whether or not required to be reflected on a balance sheet in accordance with GAAP), other than debts, liabilities or obligations incurred since the date of the Latest Balance Sheet in the Ordinary Course of Business.

SECTION 6.09. *Absence of Certain Developments.* Since December 31, 2013, (i) each Target Company has conducted its business in the Ordinary Course of Business and (ii) there has not been any Material Adverse Effect or any event, change, occurrence or circumstance that would reasonably be expected to result in a Material Adverse Effect. Without limiting the generality of the foregoing, except as set forth in Section 6.09 of the Company Disclosure Schedule, since December 31, 2013, there has not been, with respect to any of the Target Companies:

(a) any issuance of any Equity Interests or any options, warrants, calls, rights, convertible securities or other agreements or commitments to issue or sell any issued or unissued Equity Interests;

(b) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any Equity Interests or any purchase, redemption or other acquisition of any Equity Interests;

(c) any split, combination or reclassification of any Equity Interests or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for any Equity Interests;

(d) (i) other than in the Ordinary Course of Business, a material increase in the annual level of compensation of any employee, (ii) other than in the Ordinary Course of Business, an increase in the annual level of compensation payable or to become payable to any officers or directors, (iii) a grant of any unusual or extraordinary bonus, benefit or other direct or indirect compensation to any employee, director or consultant, (iv) an increase in the coverage or benefits available under any (or the creation of any new) Benefit Plan, (v) an action to accelerate, or which could reasonably be expected to result in the acceleration of, the timing of vesting or payment of any rights, compensation, benefits or funding obligations, or the making of any material determinations under any Benefit Plan or (vi) an entry into any employment, deferred compensation, severance, consulting, non-competition or similar agreement (or the amendment of any such agreement) involving a director, officer or employee;

(e) the destruction of, damage to, or loss of, any asset (whether or not covered by insurance) with a book value or fair value in excess of $25,000, either individually or in the aggregate;

(f) any purchases, leases or other acquisitions of properties or assets, other than any such transactions that (A) were carried out in the Ordinary Course of Business and (B) did not involve properties or assets with a book value or purchase price in excess of $25,000, either individually or in the aggregate;

(g) any sales, leases, licenses, disposal or other transfers of properties or assets, other than any such transactions that (A) were carried out in the Ordinary Course of Business and (B) did not involve properties or assets with a book value or sale price in excess of $25,000, either individually or in the aggregate;

(h) a change in accounting principles, methods or policies;

(i) a failure promptly to pay or discharge its debts, liabilities or obligations in an amount in excess of $25,000, except when disputed in good faith by appropriate Legal Proceedings;

(j) a commitment to make any capital expenditures;

(k) to the Knowledge of the Sellers and the Company, an adverse change in the relationship with any material suppliers, insurers, lessors, licensors, licensees, distributors and customers thereof;

(l) (i) the revocation of or a change to any material Tax election, (ii) the making of any material election (other than Tax elections wholly consistent with past practices of the Target Companies), (iii) a settlement or compromise of any material Tax Claim or liability, (iv) a change to (or a request to any Taxing Authority to change) any aspect of the method of accounting used for Tax purposes, (v) a waiver or extension of any statute of limitations in respect of Taxes or period within which an assessment or reassessment of Taxes may be issued, (vi) a filing of any amended Tax Return or (vi) the preparation or filing of any Tax Return unless such Tax Return was prepared in a manner consistent with past practice;

(m) an action or omission to act that, if taken or omitted after the date hereof without the consent of the Purchaser, would constitute a violation of the covenants contained in Sections 8.02(c)(ii), (iii), (vii), (xiii), (xiv) or (xvi); or

(n) an agreement or commitment to do any of the foregoing.

SECTION 6.10. *Real Property.*

(a) Section 6.10(a) of the Company Disclosure Schedule sets forth a true and complete list of (i) all real property and interests in real property owned in fee simple by any of the Target Companies ("Owned Property") and the street address thereof, and (ii) all real property and interests in real property leased to any of the Target Companies ("Leasehold Property"), including the identification of the lessee and lessor thereunder and the street address thereof and (iii) all real property, if any, for which an option to purchase or lease has been granted to any of the Target Companies (the "Option Property" and, together with Owned Property and Leasehold Property, being referred to herein collectively as the "Company Property"), including the identification of the optionee and optionor thereunder and (if applicable) the proposed lessee and lessor thereunder and the street address thereof. Each lot, parcel and tract of land comprising the Company Property that is used or proposed (in accordance with the current plans of the Target Companies) to be used for the mining of frac sand includes both the surface estate and mineral estate and none of the mineral estates and surface estates related to such Company Property has been severed or separately conveyed. The Company has made available to the Purchaser true, correct and complete copies of (x) all deeds for Owned Property, (y) all existing title policies and as-built surveys for Company Property to the extent in the possession of the Target Companies and (z) all recent title insurance commitments and survey updates, if any, for Company Property to the extent in the possession of the Target Companies. The Company Property constitutes all interests in real property which are currently used or currently held for use in connection with the businesses of the Target Companies as currently conducted and are necessary for the continued operation of the businesses of the Target Companies as currently conducted.

(b) The applicable Target Company has good and marketable fee simple title to all Owned Property, free and clear of all Liens, Claims or encumbrances of any nature whatsoever except for Permitted Liens.

(c) The applicable Target Company has (i) valid and enforceable leasehold interests with respect to the Leasehold Property, free and clear of all Liens, Claims or encumbrances of any nature whatsoever except for Permitted Liens and subject to the Enforceability Exceptions (as they apply to the Real Property Agreements under which any Leasehold Property is leased to any Target Company) and (ii) peaceful, undisturbed and exclusive (except with respect to rights of lessors or others as set forth in applicable Real Property Agreements) possession of the Leasehold Property.

(d) Each lot, parcel or tract constituting the Company Property adjoins or has adequate direct access to and from, or access via a permanent easement to and from, public highways and roads, and to the Knowledge of the Company, there is no proposed plan to modify or realign any street or highway in a manner which could reasonably be expected to result in the termination of such access.

(e) There is (i) to the Knowledge of the Sellers and the Company, no proposed public improvement which may involve the creation or imposition of any Lien, Claim or encumbrance on any lot, parcel or tract of land constituting the Company Property, (ii) no pending or, to the Knowledge of the Sellers and the Company, threatened eminent domain, condemnation, federal forfeiture or similar Legal

Proceeding affecting all or any portion of the Company Property, and (iii) no contemplated sale of any Company Property in lieu of condemnation. The interest of the applicable Target Company in any Company Property is not subject to any commitment for sale or transfer to any Person.

(f) Section 6.10(f) of the Company Disclosure Schedule sets forth a true and correct list of all Contracts affecting any rights and interests of any Target Company in any Company Property (including (i) any leases of Leasehold Property, (ii) any leases or occupancy agreements with respect to any Company Property leased by any Target Company to any other Person, (iii) any option agreements, letters of intent or other agreements to purchase or lease any Company Property, and (iv) any pooling agreements or other agreements with respect to payment of royalties or other compensation related to the use of any Company Property), together with all amendments, modifications, addenda or supplements thereto (collectively, the "Real Property Agreements"). The Company has made available to the Purchaser true, correct and complete copies of all Real Property Agreements. Each of the Real Property Agreements is in full force and effect, neither the Target Companies nor any of their Affiliates have received any written notice of any default thereunder and no event has occurred that, with notice or lapse of time, or both, would constitute a default thereunder by any Target Company or, to the Knowledge of the Sellers and the Company, any other party to a Real Property Agreement. No party to any of the Real Property Agreements has exercised any termination rights with respect thereto. Other than the Real Property Agreements, there are no leases, subleases, licenses, concessions or other agreements, whether written or oral, granting to any Person any right to use or occupy any portion of a lot, parcel or tract of land constituting the Company Property. In addition, other than the Real Property Agreements, there are no Contracts of sale or outstanding options, rights of first refusal or similar rights to purchase or requirements to dispose of any lot, parcel or tract included in the Company Property, or any portion thereof or interest therein.

(g) All buildings, structures, fixtures and other improvements and facilities owned, leased or otherwise used or occupied by the Target Companies and situated on any Company Property (collectively, the "Improvements") are supplied with all utilities and other services necessary for the use thereof for purposes of the operations currently conducted by the Target Companies thereon, are structurally sound, are in good condition and repair and are suitable in all material respects for the purposes for which they are being used without the need for repair or replacement except in the Ordinary Course of Business. No Improvement or portion thereof is dependent on any land not included in the Company Property for access to public roads, except to the extent such access is afforded to the applicable Target Company via a permanent easement over and across such land. No Improvement has suffered any damage by fire or other casualty loss which has not heretofore been completely repaired and restored. Except as shown on any survey of the Company Property made available to the Purchaser, and to the Knowledge of the Sellers and the Company, no building, improvements or other structure of any Person encroaches upon all or any portion of any Company Property, except for any such encroachments that do not and will not impair in any material respect the business and operations of the Target Companies or result in the incurrence of any material liability, cost or expense on the part of the Target Companies. Neither the Target Companies nor any of their Affiliates have received written notice that any Improvements constituting a portion of the whole of any Company Property, or any part thereof, encroaches upon real property of another Person.

(h) All Company Property (to the extent subject to zoning Law) is presently zoned in such a manner as to permit the use of such Company Property for the operation of the businesses of the Target Companies as currently conducted. The Target Companies have all certificates of occupancy, operating permits, conditional use permits, high capacity well permits, reclamation permits, environmental permits and other Permits issued by any Governmental Authorities required for the use and operation of the Company Property in connection with operation of the businesses of the Target Companies as currently conducted and the Target Companies have complied in all material respects with all material conditions of each such Permit held by them. No default or violation, or event that, with the lapse of time or the giving of notice, or both, would become a default or violation, has occurred with respect to any such Permit.

(i) No commitments have been made to any Governmental Authority or to any other organization, group or individual which would impose an obligation upon any owner of the Company Property to make any contribution or dedication of money or land (including but not limited to any rights of access or reciprocal easement agreements) or to construct, install or maintain any Improvements upon or in the vicinity of the Company Property.

(j) All written reports and studies (including any property condition report) in the possession of the Target Companies or any of their respective Affiliates with respect to the matters referred to in this Section 6.10 have previously been made available to the Purchaser.

(k) With respect to the ownership, occupancy and/or use of the Company Property:

(i) all Taxes required to have been paid or be paid by the Target Companies prior to the Closing have been paid or are being contested by appropriate Legal Proceedings;

(ii) there is no pending or, to the Knowledge of the Sellers and the Company, threatened Legal Proceeding for the assessment or collection of Taxes; and

(iii) there is no pending or, to the Knowledge of the Sellers and the Company, threatened inquiry, audit or request for information currently outstanding that could reasonably be expected to affect Taxes required to be paid by the Target Companies.

SECTION 6.11. *Title to and Condition of Assets*.

(a) The Target Companies own and have good and valid title to all material assets, properties and rights owned by them (other than the Owned Property, which is addressed in Section 6.10) and have valid and subsisting leasehold interests in all material assets, properties or rights which are leased by them (other than the Leasehold Property, which is addressed in Section 6.10) in connection with their respective businesses, in each case free and clear of all Liens, Claims and encumbrances, other than Permitted Liens.

(b) The material tangible assets of the Target Companies have been maintained in accordance with prudent industry practice, are in good operating condition and repair, subject to ordinary wear and tear, and are adequate in all material respects for the purposes for which they are being used.

SECTION 6.12. *Contracts.*

(a) Section 6.12(a) of the Company Disclosure Schedule contains a true, correct and complete list of all the following Contracts (each, a "Material Contract") to which any of the Target Companies is a party by which it is bound:

(i) any Contract that resulted in aggregate monetary payments by the Target Companies to a third party during the most recently completed fiscal year or that contains a commitment by the Target Companies to make aggregate monetary payments to a third party during either of the next two fiscal years, but in each case only if the amount of such monetary payments in a fiscal year exceeds $50,000;

(ii) any Contract that resulted in monetary receipts by the Target Companies during the most recently completed fiscal year or that contains a commitment by a third party to make aggregate monetary payments to the Target Companies during either of the next two fiscal years, but in each case only if the amount of such monetary payments in a fiscal year exceed $50,000;

(iii) any Contract under which a third party supplies to the Target Companies any fuel used in connection with the operation of the Facility, including fuel oil, natural gas, landfill gas or other alternative fuels;

(iv) any Contract for the purchase or lease of inventory, materials, supplies, goods, services, equipment or other assets outside of the Ordinary Course of Business, including any such Contracts entered into in connection with the Capacity Expansion Project;

(v) any Contract providing for the sale of any material properties or assets of a Target Company other than in the Ordinary Course of Business or the grant to any third party of any preferential rights to purchase any products or services of the Target Companies;

(vi) any industry track agreements, leases, service contracts, equipment, rail or rail car leases or other similar Contracts relating to transportation by rail, transloading or storage of products;

(vii) any construction or other Contract providing for or relating to the Capacity Expansion Project;

(viii) any Contract under which a Target Company has agreed or is obligated to pay royalties or similar payments to a third party, including royalties relating to the mining of aggregates or other materials;

(ix) any Contract for the employment of any individual on a full-time, part-time or consulting or other basis that provides for annual compensation in an amount in excess of $50,000 per annum;

(x) any Contract under which a Target Company grants "most favored nation" customer pricing or similar contractual assurances to any third party or grants any exclusive rights, rights of first refusal or rights of first negotiation;

(xi) any Contract which provides for "exclusivity" or any similar requirement in favor of third party, or under which a Target Company is restricted in any respect in the sale, distribution, licensing, marketing, purchasing, development or manufacturing of its products or services;

(xii) any Contract pursuant to which a Target Company purchases goods or services that contain mandatory "take or pay" or similar purchase requirements for all or a portion of the Target Company's purchase obligations with respect to such good or service;

(xiii) all Contracts that contain any product or service guaranty or warranty or right of return that is not consistent with the terms customarily provided by any Target Company in the Ordinary Course of Business which are identified in Section 6.28 of the Company Disclosure Schedule;

(xiv) any Contract with a Governmental Authority;

(xv) any Contract containing a covenant not to compete or other covenant restricting or purporting to restrict (including geographic restrictions), the right of a Target Company to engage in any line of business, acquire any property, sell, develop or distribute any product, provide any service or compete with a third party in any market, field or territory;

(xvi) any Contract containing a provision prohibiting a Target Company from soliciting for employment or hiring any officer or employee of any third party;

(xvii) any Contract with any third-party information technology, business-process outsourcing or "software-as-a-service" providers pursuant to which such providers make available any Information Systems to a Target Company;

(xviii) any Contract with (A) a Seller, (B) a current or former officer or director of any Target Company or (C) any family member, relative or Affiliate of any individual referred to in clause (A) or (B) above;

(xix) any Contract relating to the incurrence or assumption of Indebtedness or the entry into any Guarantee or imposing a Lien on any properties or assets of the Target Companies;

(xx) any Contract providing for the establishment or operation of any for joint venture, strategic alliance or partnership or providing for the sharing of profits or expenses between a Target Company on the one hand and any third party on the other hand;

(xxi) any Contract containing a "change in control" or similar provision or a provision that could result in the termination of such Contract or a modification of the rights of a Target Company thereunder upon a change in the ownership or control of such Target Company; and

(xxii) any Contract under which, to the Knowledge of the Sellers and the Company, an event has occurred that gives rise to a right on the part of any party to receive liquidated damages from any other party.

The Company has made available to the Purchaser a true, correct and complete copy of each Material Contract, together with all amendments, modifications or supplements thereto.

(b) Each of the Material Contracts is in full force and effect and is a legal, valid and binding obligation of the applicable Target Company or Target Companies, and, to the Knowledge of the Sellers and the Company, each of the other parties thereto, enforceable against it in accordance with its terms, subject to the Enforceability Exceptions. The Target Companies are not in material default under any Material Contract, nor, to the Knowledge of the Sellers and the Company, is any other party to any Material Contract in material default thereunder, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a material default thereunder. Section 6.12(b) of the Company Disclosure Schedule sets forth a reasonably detailed description of any pending or, to the Knowledge of the Sellers and the Company, threatened dispute, controversy or Claim arising under or in connection with any Contract. No Target Company has exercised any termination rights with respect to any Material Contract and, to the Knowledge of the Company, no other party to any Material Contract has exercised any termination rights with respect thereto. In addition, the Target Companies have not exercised and there are no current or, to the Knowledge of the Sellers and the Company, pending negotiations with respect to the exercise of any, premature termination, price redetermination, market out, curtailment or non-renewal of any Material Contract, and no Target Company has received written notice of any of the foregoing.

SECTION 6.13. *Litigation; Orders.*

(a) There are no Legal Proceedings pending or, to the Knowledge of the Sellers or the Company, threatened against any of the Target Companies or any of their properties or assets by or before any Governmental Authority arising from or potentially affecting any transactions or arrangements relating to this Agreement. None of the Target Companies is subject to any Order arising from or potentially affecting any transactions or arrangements relating to this Agreement.

(b) In addition, there is no Legal Proceeding pending or, to the Knowledge of the Sellers or the Company, threatened against any Target Company or any of its officers, directors or employees that (i) seeks damages or other monetary remedies from the Target Companies in an amount equal to or greater than $25,000, (ii) seeks injunctive relief that, if granted, would reasonably be expected to be material to the businesses of the Target Companies or (iii) has had or would reasonably be expected to have a Material Adverse Effect. Except as set forth in Section 6.13(b) of the Seller Disclosure Schedule, no Claims (whether or not subsequently settled or otherwise resolved) have been made or, to the Knowledge of the Sellers and the Company, threatened at any time against the Target Companies or their Affiliates under the Momentive Purchase Agreement or in connection with the transactions contemplated thereby, and none of the Target Companies nor any of their Affiliates has received any written notice of any such Claims.

(c) There is no Order to which any of the Target Companies, or any material properties or assets owned, leased or used by any of them, is subject. To the Knowledge of the Sellers and the Company, no officer, director, agent or employee of the Target Companies is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the businesses of the Target Companies. Each of the Target Companies is in compliance in all material respects with all of the terms and requirements of each Order to which it, or any of the properties or assets owned, leased or used by it, is subject.

SECTION 6.14. *Intellectual Property.*

(a) Section 6.14(a) of the Company Disclosure Schedule contains a list of (i) all Intellectual Property owned by the Target Companies that has been issued or registered or is the subject of a pending application for issuance or registration (the "Registered Intellectual Property") and (ii) all other material Intellectual Property owned by the Target Companies (the "Unregistered Intellectual Property" and together with the Registered Intellectual Property, the ("Company Owned Intellectual Property"), except that Trade Secrets owned by the Target Companies need not be listed in such Section of the Company Disclosure Schedule. All issued or registered Intellectual Property so listed is subsisting and, to the Knowledge of the Sellers and the Company, valid.

(b) All officers, employees and independent contractors of the Target Companies who have created any Company Owned Intellectual Property have executed written Contracts that assign all of their rights, title and interest in and to any such Company Intellectual Property in their entirety and irrevocably to the Target Companies. None of the Company Owned Intellectual Property is the product of a joint invention or authorship where at least one of the inventors or authors was not an employee or was not otherwise obligated by a written Contract to assign all of his or her rights to the Target Companies.

(c) In addition to and without limiting the provisions of paragraph (b) above, each Target Company has taken actions reasonably necessary to implement appropriate measures designed to protect the secrecy and confidentiality of (i) the material Trade Secrets of the Target Companies and (ii) third party confidential information that the Target Companies are obligated to maintain in confidence and to maintain the status of such Trade Secrets as Trade Secrets under applicable Law.

(d) All Company Owned Intellectual Property is owned by the Target Companies free and clear of any Liens (other than Permitted Liens) or Claims or ownership interests of any third party (including any employee). Immediately after the Closing, all Company Owned Intellectual Property will be fully transferable, alienable, improvable, licensable and otherwise exploitable by the Target Companies without restriction and without payment of any kind to any third party. Such rights are non-terminable and not subject to revocation.

(e) Section 6.14(e) of the Company Disclosure Schedule sets forth a list of all material licenses, sublicenses and other agreements to which any Target Company is a party and pursuant to which any (i) any Company Owned Intellectual Property is licensed by a Target Company to any third party or (ii) any Intellectual Property is licensed by any third party to a Target Company ("Company Licensed Intellectual Property").

(f) No Company Owned Intellectual Property or Company Licensed Intellectual Property (collectively, "Company Intellectual Property") is subject to any outstanding Order materially restricting the use thereof in the businesses of the Target Companies, or materially restricting the licensing by them of any Company Intellectual Property to any third party.

(g) To the Knowledge of the Sellers and the Company, no third party is infringing or misappropriating or violating any Company Intellectual Property in any material respect and the operation of the businesses of the Target Companies as currently conducted does not infringe, misappropriate or otherwise violate any Intellectual Property of any third party. No third party has notified a Target Company in writing that it has infringed, misappropriated or otherwise violated any Intellectual Property of such third party.

(h) The Company Intellectual Property includes all material Intellectual Property necessary for the businesses of the Target Companies.

(i) The Information Systems used by the Target Companies that are material to the conduct of their respective businesses are not dependent upon any Information System of any other Person (other than the Internet or the Information Systems of third-party information technology, business-process outsourcing or "software-as-a-service" providers who are parties to a Contract with a Target Company).

SECTION 6.15. *Tax Matters*.

(a) Each Target Company has timely filed, or has caused to be timely filed on its behalf (after giving effect to extensions), all income and other material Tax Returns required to be filed by or with respect to it and all such Tax Returns are true, complete and accurate in all material respects. All income and other material Taxes of each Target Company that are due and payable (whether or not shown as due and payable on any such Tax Return) have been timely paid in full.

(b) All material Taxes required to have been withheld or collected and paid over in connection with amounts paid or owing to or from any employee, independent contractor or any other third party have been withheld or collected and paid to the appropriate Taxing Authority.

(c) There is no outstanding audit or examination concerning Taxes of any Target Company that has been claimed or raised by a Taxing Authority and the Target Companies have not received any written notice that such an audit or examination is pending or threatened.

(d) All deficiencies asserted or assessments made as a result of any examination by any Taxing Authority of the Tax Returns of the Target Companies have been fully paid and no issue has been raised by a Taxing Authority in any prior examination of the Target Companies which, by application of the same or similar principles, could reasonably be expected to result in a proposed deficiency for any subsequent taxable period.

(e) There has been no waiver or extension of any statute of limitations in respect of Taxes of the Target Companies that remains in effect.

(f) The Target Companies are not currently subject to any Liens, other than Permitted Liens, imposed on any of its assets or properties as a result of the failure of the Target Companies to pay any amount of Taxes that are due and payable.

(g) No Target Company (i) is a party to or bound by any Tax sharing agreement, Tax indemnity or similar agreement with respect to Taxes, other than commercial agreements not primarily related to Taxes, (ii) is subject to any private letter ruling of the IRS or any comparable rulings of any Governmental Authority, (iii) is bound by or has agreed to or is required to make (other than changes required as a result of the transactions contemplated herein) any adjustments pursuant to Section 481(a) of the Code or any similar provision of Law or, to the Knowledge of the Sellers and the Company, that any Governmental Authority has proposed any such adjustment, or has any application pending with any Governmental Authority requesting permission for any changes in accounting methods that relate to the Target Companies, (iv) has executed or entered into a closing agreement pursuant to Section 7121 of the Code or any similar provision of applicable Law, (v) has participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b), (h) has, or has ever had, a permanent establishment or otherwise conducted business in any country other than the country of its organization, (iv) has granted any Person any power of attorney that is currently in force with respect to any material Tax matter or (v) has any liability for the unpaid Taxes of any other Person as a transferee or successor.

(h) No Target Company is required to report or include an item of income, or exclude an item of deduction, in any period beginning after the Closing Date as a result of (i) a sale governed by Section 453 of the Code (or analogous provision of state or local Law) closed prior to the Closing Date; (ii) any sale treated as an open transaction for any income tax purposes closed prior to the Closing Date; (iii) any prepaid amounts received prior to the Closing Date (excluding those prepaid amounts associated with the Green Field Deferred Revenue or the BH Deferred Revenue); or (iv) an election under Section 108(i) of the Code.

(i) The Company is, and has been at all times since the date of its formation, treated and properly classified as a partnership for U.S. federal income Tax purposes and has not made any filing with any Taxing Authority, including Form 8832 with the IRS, to be treated as an association taxable as a corporation for income Tax purposes. Each of the other Target Companies is, and has been at all times since the date of its formation, treated and properly classified as a disregarded entity for all federal income Tax purposes (except to the extent it was classified as a partnership for U.S. federal income Tax purposes for the periods described in Section 6.15(i) of the Company Disclosure Schedule).

For purposes of this Section 6.15, references to a Target Company shall include, in each case, any predecessor or successor entity, including as a result of a merger, liquidation or conversion transaction.

SECTION 6.16. *Benefit Plans; Employees and Employment Practices.*

(a) Section 6.16(a) of the Company Disclosure Schedule sets forth a complete and correct list of all "employee benefit plans" within the meaning of Section 3(3) of ERISA, and all bonus or other cash or other incentive compensation, salary continuation, employment, change-of-control, severance, retention, retirement, pension, deferred compensation, vacation, sick pay or paid time off and all other benefit or compensation plans, programs, contracts, policies, agreements or arrangements (whether written or unwritten, insured or self-insured) established, maintained, sponsored or contributed to (or with respect to which any obligation to contribute has been undertaken) by a Target Company or any ERISA Affiliate for the benefit of any employee, officer, director or independent contractor of the Target Companies (whether current, former or retired) or any beneficiary thereof (each a "Benefit Plan").

(b) The Company has made available to the Purchaser: (i) copies of all material documents setting forth the terms of each Benefit Plan, including all amendments thereto and all related trust documents; (ii) the most recent annual reports (Form Series 5500), if any, required under ERISA or the Code in connection with each Benefit Plan; (iii) the most recent actuarial reports (if applicable) for all Benefit Plans; (iv) the most recent summary plan description, if any, required under ERISA with respect to each Benefit Plan; (v) all material written contracts, instruments or agreements relating to each Benefit Plan, including administrative service agreements and group insurance contracts; (vi) the most recent IRS determination letter (or in the case of a master or prototype plan, a favorable opinion letter or in the case of a volume submitter plan, a favorable advisory letter) issued with respect to each Benefit Plan intended to be qualified under Section 401(a) of the Code; and (vii) all filings under the Internal Revenue Service Employee Plans Compliance Resolution System program or the Department of Labor's Delinquent Filer Voluntary Compliance Program (if any).

(c) Neither the Target Companies nor any ERISA Affiliates have any binding obligation arising from any communication to any employee, officer, director or contractor of the Target Companies (whether current, former or retired) or to any other Person to materially modify any Benefit Plan or to establish or implement any other material benefit plan, program, or arrangement.

(d) Neither the Target Companies nor any ERISA Affiliates contribute to or have any obligation to contribute to, or had any such obligation during the past six-year period preceding the Closing Date, and no Benefit Plan is (i) a plan subject to Title IV of ERISA, Section 302 of ERISA or Section 412 of the Code, (ii) a "multiemployer plan" as defined in Section 3(37) of ERISA, (iii) a plan described in Section 413 of the Code, or (iv) a plan funded through a trust that is intended to be exempt from federal income taxation pursuant to Section 501(c)(9) of the Code.

(e) Each Benefit Plan has been established, documented, administered and operated in compliance in all material respects with all applicable Laws and its governing documents. All reports and disclosures relating to the Benefit Plans required to be filed with or furnished to Governmental Authorities, Benefit Plan participants or Benefit Plan beneficiaries have been filed or furnished in substantial compliance with all applicable Laws in a timely manner.

(f) Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "Qualified Plan") has received, from the IRS, a favorable determination letter (or in the case of a master or prototype plan, a favorable opinion letter or in the case of a volume submitter plan, a favorable advisory letter) as to its qualification under Section 401(a) of the Code, and to the Knowledge of the Sellers and the Company, no event of condition exists, whether by action or by failure to act, that could adversely affect the qualified status of any such Qualified Plan.

(g) No Legal Proceeding, audit or investigation has been threatened, asserted, instituted or, to the Knowledge of the Sellers and the Company, is anticipated against any of the Benefit Plans (other than non-material routine claims for benefits and appeals of such claims), any trustee or fiduciaries thereof, any ERISA Affiliate, any employee, officer, director, stockholder or independent contractor of the Target Companies (whether current, former or retired), or any of the assets of any trust of any of the Benefit Plans. With respect to each Benefit Plan, all contributions, reimbursements and premium payments that are due have been made, and all contributions, reimbursements and premium payments for any period ending on or before the Closing that are not yet due have been made or properly accrued.

(h) Neither any Target Company nor any ERISA Affiliate has any liability, including any direct or indirect contingent liability, in connection with any Benefit Plan that has been terminated prior to the date of Closing that could subject the Purchaser to any material liability. Each Benefit Plan may at any time be unilaterally amended or terminated in its entirety, in accordance with the terms thereof, without liability except as to benefits accrued thereunder prior to such amendment or termination.

(i) With respect to each Benefit Plan which is a group health plan, the Target Companies and their ERISA Affiliates have complied with (i) the health care continuation provisions of Section 4980B of the Code and corresponding provisions of ERISA (collectively "COBRA") and the applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and the regulations thereunder, and neither the Target Companies nor any of their ERISA Affiliates have incurred any liability under Section 4980 of the Code. Except to the extent required pursuant to Section 4980B(f) of the Code and the corresponding provisions of ERISA, no Benefit Plan provides retiree medical or retiree life insurance benefits to any Person, and none of the Target Companies is contractually or otherwise obligated (whether or not in writing) to provide any Person with life insurance or medical benefits upon retirement or termination of employment.

(j) Since the earliest date of establishment of any Benefit Plan, each Benefit Plan that is a nonqualified deferred compensation plan or arrangement has been maintained in good faith operational compliance and, for all periods after December 31, 2008, in documentary compliance with Section 409A of the Code.

(k) Except as set forth in Section 6.16(k) of the Company Disclosure Schedule, with respect to each of the Benefit Plans: (i) no non-exempt "prohibited transaction," within the meaning of Section 4975 of the Code or Section 406 of ERISA, has occurred or is reasonably expected to occur; and (ii) to the Knowledge of the Sellers and the Company, no Benefit Plan is under, and neither the Target Companies nor any of their ERISA Affiliates have received any notice of, an audit or investigation by the IRS, Department of Labor or any other Governmental Authority, and no such completed audit, if any, has resulted in the imposition of any Tax.

(l) Except as set forth in Section 6.16(l) of the Company Disclosure Schedule, the execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, will not (either alone or upon the occurrence of any additional or subsequent events) (i) result in any payment becoming due to any employee, officer, director, stockholder or independent contractor of the Target Companies (whether current, former or retired) or their beneficiaries, (ii) increase any benefits otherwise payable under any Benefit Plans, (iii) result in the acceleration of the time of payment or vesting of any such benefits or (iv) result in the incurrence or acceleration of any other obligation related to the Benefit Plans or to any employee, officer, director, stockholder or independent contractor of the Target Companies, or otherwise, that would not be deductible by reason of Section 280G of the Code or would be subject to an excise tax under Section 4999 of the Code.

(m) No Benefit Plan is mandated by a government other than the United States or is subject to the applicable Laws of a jurisdiction outside of the United States.

(n) To the Knowledge of the Sellers and the Company, no person who was engaged by a Target Company as an independent contractor or in any other non-employee capacity should be characterized as or will be deemed to be an employee of such Target Company under applicable Law, including for purposes of federal, state, and local income taxation, workers' compensation, unemployment insurance and Benefit Plan eligibility.

(o) With respect to any employee or officer of a Target Company (each a "Company Employee") (whether current, former or retired), the Target Companies are in material compliance with all applicable Laws respecting employment and employment practices (including all immigration and I-9 obligations), terms and conditions of employment, wages, hours of work and occupational safety and health; and there are no material controversies or claims pending, or to the Knowledge of the Sellers or the Company, threatened between any of the Company Employees (whether current, former or retired), on the one hand, and the Target Companies or any of their ERISA Affiliates, on the other hand, relating to employment practices or any applicable Laws contemplated by this Section 6.16(o).

(p) To the Knowledge of the Sellers and the Company, no Company employee who exercises management level responsibilities for the Target Companies intends to terminate his or her employment. In addition, except with respect to the Company Employees set forth in Section 6.16(p) of the Company Disclosure Schedule, the Target Companies have no present intention to terminate the employment of any Company Employee who exercises management level responsibilities for the Target Companies. There are no audits, administrative or other employment related matters or Legal Proceedings pending or, to the Knowledge of the Sellers and the Company, threatened before any Governmental Authority, relating to the employment of any Company Employee or any person engaged by a Target Company as an independent contractor or in any other non-employee capacity.

(q) All amounts required by any statute, insurance policy, Governmental Authority or agreement to be paid into any workers' compensation loss or reserve fund, collateral fund, sinking fund or similar account with respect to any employee or officer of the Target Companies (whether current, former or retired) have been duly paid into such fund or account as required.

(r) There are no non-competition obligations or any other restrictions pursuant to any employment or other agreement between any Seller or any of its Affiliates (or other party for the benefit of any Seller or its Affiliates) on the one hand and any Continuing Employee on the other hand that prevent or restrict such Continuing Employee (as defined in Section 8.04(a)) from performing his or her obligations or responsibilities (as they may exist from time to time as determined by the Purchaser) to or for the Target Companies or the Purchaser or its Affiliates.

SECTION 6.17. *Labor Relations.*

(a) None of the Target Companies is a party to any labor union or collective bargaining agreement and there is no labor union or organizing activity pending or, to the Knowledge of the Sellers and the Company, threatened against any of the Target Companies. The Target Companies have not engaged in any unfair labor practice relating to their businesses or operations and there is no unfair labor practice complaint pending or, to the Knowledge of the Sellers and the Company, threatened before the National Labor Relations Board or any other Governmental Authority. There is no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of the Sellers and the Company, threatened against any of the Target Companies which could reasonably be expected to adversely affect the businesses or operations of the Target Companies. No grievance, charge, audit or other labor dispute or Legal Proceeding arising out of or under any employment or similar agreement or other labor or employment matter is pending or, to the Knowledge of the Sellers and the Company, threatened against any of the Target Companies.

(b) The Target Companies have not (i) effectuated a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101, *et seq.*, as amended, or any similar Law (collectively, the "WARN Act")) affecting the Facility or any other facility owned or operated by any of the Target Companies or any operating units within any such facility, (ii) effectuated a "mass layoff" (as defined in the WARN Act) affecting any such facility, or (iii) violated the WARN Act.

SECTION 6.18. *Environmental, Health and Safety Matters(a)* . Except as set forth on Section 6.18 of the Company Disclosure Schedule:

(a) The Target Companies have obtained and validly hold all Permits required under applicable Environmental Health and Safety Laws to operate their businesses as currently conducted ("Environmental Permits") and have timely submitted any required applications for renewal. Section 6.18(a)(i) of the Company Disclosure Schedule contains a list of all Environmental Permits which are held by the Target Companies. Section 6.18(a)(ii) of the Company Disclosure Schedule contains (i) a list of any Environmental Permits for which a Target Company has submitted or filed an application but which have not yet been issued by the applicable Governmental Authority and (ii) a list of any other Environmental Permits that, to the Knowledge of the Company and the Sellers, are required for the Post-Expansion Business.

(b) The Target Companies are currently operating, and have operated at all times since their respective dates of formation, the Facility and are currently conducting, and have conducted at all times since their respective dates of formation, their businesses in compliance in all material respects with all applicable Environmental Health and Safety Laws and Environmental Permits.

(c) To the Knowledge of the Sellers and the Company, no past or present actions, activities, circumstances, conditions, events or incidents (including the Release of any Material of Environmental Concern) have occurred in connection with the operation of the businesses of the Target Companies or otherwise that would reasonably be expected to result in the incurrence of a material Environmental Health and Safety Liability by the Target Companies. The Target Companies have no responsibility by Contract (except for Contracts entered into in the Ordinary Course of Business) or, to the Knowledge of the Sellers and the Company, by operation of Law for any Environmental Health and Safety Liability of any unaffiliated Person.

(d) Neither the Target Companies, nor any Company Property nor, to the Knowledge of the Sellers and the Company, any real property formerly owned or leased by the Target Companies, is or has been the subject of any written notification, demand, request, or Order with any Governmental Authority or other Person respecting (i) any actual or alleged violation of or liability under Environmental Health and Safety Laws, (ii) any pending or proposed Remedial Action or (iii) Release or threatened Release of a Material of Environmental Concern, in each case, in connection with which any of the Target Companies would incur material Environmental Health and Safety Liability.

(e) To the Knowledge of the Sellers and the Company, no investigation or review is pending or threatened against any Target Company, or with respect to any Company Property or, in connection with which any of the Target Companies would incur material Environmental Health and Safety Liability, any real property formerly owned or leased by a Target Company, by any Governmental Authority under any applicable Environmental Health and Safety Law.

(f) There is not located at any Company Property any (i) underground storage tank, (ii) landfill, (iii) surface impoundment or (iv) except where the presence thereof would not cause any of the Target Companies to incur any material Environmental Health and Safety Liability, (y) asbestos-containing material or (z) equipment containing polychlorinated biphenyls.

(g) The Target Companies have not released any Material of Environmental Concern nor, to the Knowledge of the Sellers and the Company, have any Material of Environmental Concern otherwise been released or threatened to be Released in, into, on, onto, or under any of the Company Property such that material investigation, remediation, clean-up or other response is or will be required of any of the Target Companies under applicable Environmental Health and Safety Law.

(h) None of the Target Companies, nor any Person acting on their behalf, is required by any Environmental Health and Safety Law by virtue of the transactions contemplated by this Agreement: (i) to perform a site assessment for Material of Environmental Concern, (ii) to remove or remediate Material of Environmental Concern, (iii) to give notice to or receive approval from any Governmental Authority under any Environmental Health and Safety Law, or (iv) to record or deliver to any Person any disclosure document or statement pertaining to environmental matters.

(i) The Target Companies have not entered into or agreed to any Order (including any consent decree) nor are they subject to any injunction, judgment or other Order relating to compliance with any Environmental Health and Safety Laws or to investigation or cleanup of Material of Environmental Concern under any Environmental Health and Safety Laws.

(j) All material non-privileged written reports, data, results of investigations, studies, written communications and other material information in the possession or control of the Target Companies or their Affiliates (including any site assessments or environmental, health or safety audit report) with respect to any of the matters referred to in this Section 6.18 have previously been made available by the Company to the Purchaser and the substance of any material information included in any privileged documents in the possession or control of the Target Companies, or their Affiliates with respect to any of the matters referred to in this Section 6.18 has been communicated to the Purchaser.

To the extent that the representations in Sections 6.13 and 6.20 conflict with the representations in this Section 6.18, the representations in this Section 6.18 shall control.

SECTION 6.19. *Reserves.* Set forth in Section 6.19 of the Company Disclosure Schedule is a list of each engineering or geological report, survey or other study prepared by, on behalf of, or at the direction of, the Target Companies or any of its Affiliates that analyzes or otherwise relates to the reserves available at the Facility. The Company has made available to the Purchaser a true and complete copy of each such report, survey or other study.

SECTION 6.20. *Compliance with Laws; Permits.*

(a) The Target Companies are, and have been at all times since January 1, 2012, in compliance in all material respects with all applicable Laws of any Governmental Authority. Since January 1, 2012, no Target Company has received any written notice of or has been charged with any material violation of any applicable Law. To the Knowledge of the Sellers and the Company, the Target Companies are not under investigation with respect to the violation of any applicable Law.

(b) Except as set forth in Section 6.20(b)(i) of the Company Disclosure Schedule, the Target Companies have all Permits which are required for the operation of their businesses as currently conducted, including all Permits required under any applicable Laws. Section 6.20(b)(ii) of the Company Disclosure Schedule contains a true and correct list of all such Permits (other than Environmental Permits) issued to and held by the Target Companies. Section 6.20(b)(iii) of the Company Disclosure Schedule sets forth a true and correct (i) list of any such Permits (other than Environmental Permits) for which a Target Company has submitted or filed an application but which have not yet been issued by the applicable Governmental Authority and (ii) a list of any other Permits that, to the Knowledge of the Company and the Sellers, are required for the Post-Expansion Business. The Target Companies are not in default or violation, and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation, in any material respect of any term, condition or provision of any Permit held by them, to which their businesses are subject or by which their properties or assets are bound.

SECTION 6.21. *Related Party Transactions.* None of the Sellers nor any officer, director or employee of the Target Companies, and, to the Knowledge of the Sellers and the Company, no family member, relative or Affiliate of any such Person, (a) owns any direct or indirect interest of any kind in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, any Person which is (i) a competitor, supplier, customer, landlord, tenant, creditor or debtor of the Target Companies or (ii) engaged in a business related to the businesses of the Target Companies, (b) except as set forth in Section 6.21 of the Company Disclosure Schedule, is a party to any Contract with a Target Company (other than employment contracts with and Benefit Plans of a Target Company) or (c) owns any material property or asset, real or personal, tangible or intangible, used in or held for use in connection with the businesses of the Target Companies.

SECTION 6.22. *Certain Business Practices.* Since January 1, 2012, neither any Target Company nor its Affiliates, directors, officers, employees or agents (or, to the Knowledge of the Sellers and the Company, any distributors, representatives or other persons acting on the express, implied or apparent authority of any Target Company) has, directly or indirectly, given or agreed to give any bribe or other unlawful payment of money or other unlawful thing of value, any unlawful discount, or any other unlawful inducement, to or from any Person or Governmental Authority in connection with or in furtherance of the businesses of the Target Companies. The businesses of the Target Companies are not dependent in any material respect upon the making or receipt of such illegal payments, discounts or other inducements.

SECTION 6.23. *Banks*. Section 6.23 of the Company Disclosure Schedule contains a true, correct and complete list of the names and locations of all banks in which the Target Companies have accounts or safe deposit boxes and the names of all persons authorized to draw thereon or to have access thereto. No person holds a power of attorney to act on behalf of any Target Company with respect to any such accounts or safe deposit boxes.

SECTION 6.24. *Customers and Suppliers.*

(a) Section 6.24(a) of the Company Disclosure Schedule sets forth a true and correct list of the ten largest customers of the Target Companies, as measured by the dollar amount of recurring revenue on a consolidated basis from such customers during the nine month period ended September 30, 2014. Since December 31, 2013, no customer listed in Section 6.24(a) of the Company Disclosure Schedule has terminated its relationship with the Target Companies or materially reduced or changed the rate or amount of its business with the Target Companies or notified any Target Company in writing that it intends to do so.

(b) Section 6.24(b) of the Company Disclosure Schedule sets forth a true and correct list of the ten largest suppliers of the Target Companies, as measured by the dollar amount of purchases from such suppliers during the nine month period ended September 30, 2014. Since December 31, 2013, no supplier listed in Section 6.24(b) of the Company Disclosure Schedule has terminated its relationship with the Target Companies or materially reduced or changed the pricing or other terms of its business with the Target Companies or notified any Target Company in writing that it intends to do so.

SECTION 6.25. *Receivables; Prepaid Assets.*

(a) All Receivables of the Target Companies were acquired by the Target Companies in the Ordinary Course of Business, and all such Receivables represent claims that arose from the actual sale of goods or the performance of services in accordance with the terms of the respective agreements providing for the sale or performance thereof.

(b) All prepaid assets of the Target Companies arose or were acquired by the Target Companies in transactions carried out in the Ordinary Course of Business.

SECTION 6.26. *Inventory.* All Inventory of the Target Companies was manufactured, purchased, acquired or ordered in the Ordinary Course of Business and consistent with the regular inventory practices of the Target Companies and all such Inventory is of a quantity and quality useable and saleable in the Ordinary Course of Business, except for obsolete items and items of below standard quality, all of which have been or will be written off or written down to net realizable value in the Financial Statements or on the accounting records of the Target Companies as of the Closing Date.

SECTION 6.27. *Insurance.* Section 6.27(i) of the Company Disclosure Schedule contains a true and correct list of all material insurance policies maintained by the Target Companies that provide coverage for the business, properties or assets of the Target Companies. The Company has made available to the Purchaser true and complete copies of each such policy. All of such policies are in full force and effect and the Target Companies are not in material default of any provision thereof nor have they received written notice of cancellation or termination thereof. Set forth in Section 6.27(ii) of the Company Disclosure Schedule is an accurate and complete insurance loss run report for workers' compensation, environmental, environmental excess and property coverages for the periods covered thereby.

SECTION 6.28. *Product and Service Warranty.* Set forth in Section 6.28 of the Company Disclosure Schedule are (a) copies of all of the standard terms and conditions of all product or service warranties and guarantees given by the Target Companies (other than those that have not expired pursuant to their terms) and (b) a list of all Claims in respect of warranties or product liabilities asserted against the Target Companies since January 1, 2014.

SECTION 6.29. *Books and Records.*

(a) The books of account, the membership ledger or registry and other records of each of the Target Companies, all of which have been made available to the Purchaser, are complete and correct, represent actual, bona fide transactions, and have been maintained in accordance with sound business practices and applicable Law.

(b) The minute books of each Target Company contain accurate and complete records of all material limited liability company actions taken by the members and managers of such Target Company since the date of its formation. At the Closing, all such books and records will be in the possession of the Company.

SECTION 6.30. *Indebtedness.* Section 6.30 of the Company Disclosure Schedule sets forth all outstanding Indebtedness of the Target Companies as of the date hereof. All such outstanding Indebtedness of the Target Companies may be prepaid without prepayment penalty or premium. There are no outstanding Guarantees (or any similar instruments or Contracts) of any Indebtedness of any other Person that have been issued by or are binding on any of the Target Companies.

SECTION 6.31. *No Brokers or Finders.* Except as set forth in Section 6.31 of the Company Disclosure Schedule, no agent, broker, finder, investment or commercial banker or other Person engaged by or acting on behalf of the Target Companies or their Affiliates in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated hereby is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement or any such transactions. The fees or other commissions described in Section 6.31 of the Company Disclosure Schedule shall be paid for or on behalf of the Sellers at the Closing, such that none of the Target Companies or the Purchaser shall have any liability or responsibility with respect thereto.

SECTION 6.32. *No Other Representations and Warranties.* EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III, ARTICLE IV, ARTICLE V AND THIS ARTICLE VI AND ELSEWHERE IN THIS AGREEMENT AND THE AGREEMENTS OR DOCUMENTS EXECUTED OR DELIVERED IN CONNECTION HEREWITH, THE SELLERS AND THE COMPANY DO NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, AND THE SELLERS AND THE COMPANY HEREBY DISCLAIM ANY SUCH OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SELLERS AND THE COMPANY MAKE NO REPRESENTATIONS AND WARRANTIES REGARDING ANY FINANCIAL PROJECTIONS MADE AVAILABLE TO THE PURCHASER IN CONNECTION WITH SUCH TRANSACTIONS.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents to the Sellers, on and as of the date of this Agreement and the Closing Date, as follows:

SECTION 7.01. *Organization; Power and Authority*. The Purchaser (i) is a limited liability company duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and (ii) has all requisite limited liability power and authority to own, lease and operate its assets and properties and conduct its business and operations as currently conducted.

SECTION 7.02. *Authorization; Execution and Validity*. The Purchaser has all necessary limited liability company power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. The Purchaser has taken all limited liability company actions or proceedings required to be taken by it or on its behalf to authorize and permit the execution and delivery of this Agreement and each other agreement, document, instrument and certificate required to be executed and delivered by it pursuant hereto (the "Purchaser Documents"), the performance by the Purchaser of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby. This Agreement has been, and at the Closing, the Purchaser Documents will be, duly and validly executed and delivered by the Purchaser and, assuming the due authorization, execution and delivery by each of the other parties hereto or thereto, each of this Agreement and the Purchaser Documents constitutes or will constitute a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, subject to the Enforceability Exceptions.

SECTION 7.03. *Noncontravention*. None of the execution and delivery by the Purchaser of this Agreement or the Purchaser Documents, the performance by the Purchaser of its obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (i) conflicts or will conflict with, or results or will result in any violation or breach of, any provision of the Organizational Documents of the Purchaser, (ii) conflicts or will conflict with or results or will result in any violation or breach of, or constitute a default under, any term or provision of any Contract or Permit or other instrument or document to which the Purchaser is a party or by which its properties or assets are bound or (iii) assuming the filings and Consents referred to in Section 7.04 are made or obtained, conflicts or will conflict with, or results or will result in any violation of, any Law or Order applicable to the Purchaser or its properties or assets.

SECTION 7.04. *No Governmental Consent or Approval Required*. No Consent, Permit or Order of, or declaration, registration, qualification, designation or filing to or with, any Governmental Authority is required for or on behalf of the Purchaser for or in connection with the execution and delivery by the Purchaser of this Agreement or the Purchaser Documents, the performance by the Purchaser of its obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, other than the filing by the Purchaser of a notification and report form with the FTC and the DOJ under the HSR Act and the expiration or termination of any applicable "waiting period" thereunder.

SECTION 7.05. *Purchase for Investment*. The Purchaser is purchasing the Securities for its own account for investment and not with a view to, or in connection with, the distribution thereof in violation of the Securities Act. The Purchaser acknowledges that the Securities are not being registered under the Securities Act or any applicable state securities laws and, accordingly, may not be transferred or sold except in compliance with the registration requirements of the Securities Act and the registration or qualification requirements of applicable state securities laws or as permitted under an available exemption therefrom.

SECTION 7.06. *Sufficient Funds*. The Purchaser has or has access to, and as of the Closing Date will have or have access to, sufficient funds to (i) pay the Initial Purchase Price to the Sellers in accordance with the terms of this Agreement, (ii) deposit the Escrow Amount in the Escrow Account as contemplated by Sections 1.05 and 2.02(b), (iii) pay all Closing Indebtedness pursuant to Section 2.02(c) and (iv) pay any Adjustment Amount required pursuant to Section 1.04(f).

SECTION 7.07. *Litigation*. There are no Legal Proceedings pending or, to the Purchaser's Knowledge, threatened against the Purchaser that could reasonably be expected to affect in any material respect the ability of the Purchaser to comply with its obligations under this Agreement or consummate the transactions contemplated hereby.

SECTION 7.08. *No Brokers or Finders.* No agent, broker, finder, investment or commercial banker or other Person engaged by or acting on behalf of the Purchaser or any of its Affiliates in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated hereby is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement or such transaction for which any party other than the Purchaser will have any liability or responsibility.

ARTICLE VIII
COVENANTS

SECTION 8.01. *Cooperation and Access.*

(a) During the period commencing on the date hereof and ending on the earlier of (i) the Closing Date or (ii) the date upon which this Agreement is terminated in accordance with Section 11.01 (the "Pre-closing Period"), the Sellers and the Company shall, and shall cause the other Target Companies to, upon reasonable notice given by the Purchaser to the Sellers and the Company, give the Purchaser and its representatives reasonable access, during regular business hours, to the books, records, financial statements, Contracts, commitments, directors, officers, employees, contractors, consultants, attorneys, accountants, auditors and other advisors and representatives of the Target Companies (including any books and records of the Sellers and the Company relating to the businesses, operations, properties, assets, financial condition and results of operations of the Target Companies), and to the properties, assets and facilities of the Target Companies for purposes of inspection and assessment thereof (which inspection or assessment shall not include invasive measures such as soil borings, test pits or groundwater testing), and shall furnish, or cause to be furnished, to the Purchaser and its lenders, and their respective representatives such financial, tax and operating data (including current financial statements, accounts receivable aging and other current financial information) and other information with respect to the businesses, operations, properties, assets, financial condition and results of operations of the Target Companies as the Purchaser shall from time to time reasonably request; *provided*, *however*, that all information received by the Purchaser and its Affiliates pursuant to this Section 8.01(a) shall be subject to the terms of the Confidentiality Agreement. In addition, during the Pre-closing Period, the Purchaser and its Affiliates may, with the consent of the Seller Representative (such consent not to be unreasonably withheld or delayed), (i) contact the contractors, subcontractors, customers, suppliers and other Persons doing business with the Target Companies and (ii) discuss with, or provide information to, and request information from, such contractors, subcontractors, customers, suppliers

and other Persons concerning the transactions contemplated by this Agreement; *provided*, that the Seller Representative and Purchaser shall (x) coordinate with each other in good faith to establish guidelines and procedures with respect to any such contact with the contractors, subcontractors, customers, suppliers and other Persons doing business with the Target Companies and (y) permit the Seller Representative to attend and participate (or select its designee to attend and participate) in such discussions with such contractors, subcontractors, customers, suppliers and other Persons concerning the transactions contemplated by this Agreement.

(b) The parties hereto shall use commercially reasonable efforts to implement arrangements for the exercise by the Purchaser of the rights granted to it pursuant to this Section 8.01 with a view to ensuring that such exercise does not interfere with or impair in any material respect the business of the Target Companies.

SECTION 8.02. *Conduct of Business.*

(a) Except as otherwise expressly provided in this Agreement, or as set forth in Section 8.02(a) of the Company Disclosure Schedule, or with the prior written consent of the Purchaser, during the Pre-Closing Period, the Sellers shall cause the Target Companies to:

(i) conduct their businesses only in the Ordinary Course of Business;

(ii) use reasonable best efforts to keep intact their business organizations and keep available the services of their present officers and employees;

(iii) use reasonable best efforts to preserve intact their relationships with lessors, lessees, optionors, contractors, subcontractors, consultants, customers, suppliers and other Persons who have business relationships with the Target Companies;

(iv) use reasonable best efforts to preserve and maintain their properties and assets and technology;

(v) continue to carry out the Capacity Expansion Project in accordance with the plans, specifications and timetable set forth in Section 8.02(a)(v) of the Company Disclosure Schedule and use reasonable best efforts to obtain all Permits required to operate the Post-Expansion Business;

(vi) consummate the purchase of all outstanding Class P Common Units (other than those owned by Horn and Cobb) contemplated to be purchased pursuant to the Redemption Agreements; and

(vii) maintain their books, accounts and records in the Ordinary Course of Business, and not make any material change to any of their accounting principles unless required by Law.

(b) Except as otherwise expressly provided in this Agreement or with the prior written consent of the Purchaser, during the Pre-closing Period, the E Sellers shall cause the Blocker Companies and Cobb shall cause Pierpont not to (i) engage any business, operations or activities of any kind or character other than activities incidental to the ownership of Equity Interests of the Company or the consummation of the transactions contemplated by this Agreement, (ii) incur any debts, liabilities or obligations that will not be paid or satisfied prior to the Closing Date, (iii) acquire, own or lease any properties, assets or rights other than its Equity Interests in the Company or (iv) take any other action with respect to itself or its business, operations, properties or assets that, if taken by the Target Companies with respect to themselves or their respective businesses, operations, properties or assets, would be prohibited by the terms of paragraph (c) below; *provided, however*, that a Blocker Company may redeem a portion of the Blocker Shares (or pay Taxes, including estimated Taxes) using funds received by such Blocker Company from the cash sweep provided for in Section 8.13.

(c) Except as otherwise expressly provided in this Agreement or as set forth in Section 8.02(c) of the Company Disclosure Schedule, or with prior written consent of the Purchaser, during the Pre-closing Period, the Sellers shall cause the Target Companies not to:

(i) amend its Organizational Documents;

(ii) issue, sell or dispose of any Equity Interests or any options, warrants, calls, rights, convertible securities or other agreements or commitments to issue or sell any issued or unissued Equity Interests;

(iii) merge or consolidate with any other Person;

(iv) (A) materially increase the annual level of compensation payable or to become payable to any of its officers or directors, (B) grant any unusual or extraordinary bonus, benefit or other direct or indirect compensation to any employee, director or consultant, (C) increase the coverage or benefits available under any (or create any new) Benefit Plan; or (D) enter into any employment, deferred compensation, severance, consulting, non-competition or similar agreement (or amend any such agreement) involving a director, officer or employee;

(v) terminate the employment of any salaried Company Employee exercising management-level responsibilities for the Target Companies;

(vi) other than in the Ordinary Course of Business, incur or assume any Indebtedness, other than Indebtedness to be incurred as described in Section 8.02(c)(vi) of the Company Disclosure Schedule, or enter into any Guarantee;

(vii) subject to any Lien or otherwise encumber or, except for Permitted Liens, permit, allow or suffer to exist any Lien on, any material properties or assets, including any Company Property;

(viii) acquire, whether by purchase or lease, any real property or any option to acquire any such real property;

(ix) other than sales of frac sand in the Ordinary Course of Business, sell, assign, license, transfer, convey, lease or otherwise dispose of any material properties or assets (including through any sale and leaseback transaction), including any Company Property;

(x) cancel or compromise any Indebtedness or Claim or amend, cancel, terminate, relinquish, waive or release any right with a value exceeding $25,000 other than in the Ordinary Course of Business;

(xi) settle, release or compromise any pending or threatened Legal Proceeding or Claim involving a payment in an amount exceeding $25,000;

(xii) incur any capital expenditure or make any commitment for capital expenditures in excess of $50,000 on an individual basis and $100,000 in the aggregate, in each case other than capital expenditures or commitments for capital expenditures relating to the Capacity Expansion Project and other matters set forth in Section 8.02(c)(xii) of the Company Disclosure Schedule;

(xiii) enter into any Contract, understanding or commitment that restrains, restricts, limits or impedes the ability of the Company to compete with or conduct any business or line of business in any geographic area;

(xiv) engage in any new business or invest in, make a loan, advance or capital contribution to, or otherwise acquire the securities, businesses or assets of any other Person, except in each case for acquisitions of real property described in Section 8.02(c)(xiv) of the Company Disclosure Schedule;

(xv) terminate or modify in any material respect any Material Contract or enter into any Contract that would be a Material Contract if it were in effect on the date hereof;

(xvi) fail to take any action required to maintain in full force and effect, or take any action to modify or amend, all or any material Permits (including material Environmental Permits) that are required in connection with the conduct of the business of the Target Companies;

(xvii) (A) change or revoke any Tax election; (B) make any Tax election that is not wholly consistent with past practices of the Target Companies), (C) settle or compromise any Tax Claim or liability; (D) incur any liability for Taxes other than in the ordinary course of business; (E) change (or make a request to any Governmental Authority to change) any aspect of its method of accounting for Tax purposes (other than as necessary to comply with Section 9.02(e)(ii)); (F) waive or extend any statute of limitations in respect of Taxes or period within which an assessment or reassessment of Taxes may be issued; or (G) file any amended Tax Return; or

(xviii) agree to do anything prohibited by this Section 8.02 or anything which would make any of the representations and warranties contained in Article III, IV, V or VI untrue or incorrect in any material respect.

SECTION 8.03. *Reasonable Best Efforts; Government Approvals.*

(a) During the Pre-closing Period, upon the terms and subject to the conditions of this Agreement, each of the parties shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done and cooperate with each other in order to do, all things necessary, proper or advisable (subject to any applicable Laws) to consummate the transactions contemplated by this Agreement as promptly as practicable, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the transactions contemplated hereby, and the taking of such actions as are necessary to obtain any requisite Consents, Orders, Permits, qualifications, exemptions, waiting period expirations or terminations or waivers from any Governmental Authority or other Person. In addition, no party shall take any action during the Pre-closing Period (other than any action required to be taken under this Agreement or to which the other parties shall have granted their consent) that would reasonably be expected to materially delay the obtaining of, or result in not obtaining, any Consent, Order, Permit, qualification, exemption, waiting period expirations or terminations or waiver from any Governmental Authority or other Person required to be obtained prior to Closing.

(b) In addition to and without limiting any of the other covenants of this parties contained in this Section 8.03, the Purchaser and the Company shall (i) make all filings required of each of them or any of their Affiliates under the HSR Act with respect to the transactions contemplated hereby as promptly as practicable and, in any event, within three Business Days after the date of this Agreement, (ii) substantially comply at the earliest practicable date with any request under the HSR Act for additional information, documents or other materials received by each of them from the FTC, the DOJ or any other Governmental Authority in respect of such filings or such transactions, (iii) cooperate with each other in connection with any such filing (including, to the extent permitted by applicable Law, providing copies of all such documents or the relevant portions thereof to the non-filing parties prior to filing and considering in good faith all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the FTC, the DOJ or other Governmental Authority under the HSR Act with respect to any such filing or any such transaction and (iv) cooperate to seek early termination of any applicable waiting period under

the HSR Act. Each party shall use commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable Law in connection with the transactions contemplated by this Agreement. Each such party shall promptly inform the other parties hereto of any oral communication with, and provide copies of written communications with, any Governmental Authority regarding any such filings or any such transaction. No party hereto shall independently participate in any formal meeting with any Governmental Authority in respect of any such filings, investigation or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Authority, the opportunity to attend and/or participate. Subject to applicable Law, the parties hereto will consult and cooperate with one another, and consider in good faith the views of the other parties, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the HSR Act. Notwithstanding anything to the contrary in this Agreement, neither the Purchaser, Sellers, the Target Companies nor any of their respective Affiliates (including, following the Closing, the Target Companies) shall be required (i) to hold separate (including by trust or otherwise) or divest any of their respective businesses or assets, (ii) to agree to any limitation on the operation or conduct of their respective businesses or (iii) to waive any of the conditions set forth in Article X.

SECTION 8.04. *Employee Matters.*

(a) Each Company Employee employed by the Target Companies as of the Closing (including such persons on disability or leave of absence, whether paid or unpaid) (a "Continuing Employee") shall be given credit for all service with the Target Companies and their respective predecessors under any employee benefit plan of the Purchaser or its Affiliates in which such Continuing Employee is eligible to participate (a "Purchaser Plan"), including any such plans providing vacation, sick pay, severance and retirement benefits maintained by the Purchaser or its Affiliates in which such Continuing Employees participate for purposes of eligibility, vesting and entitlement to benefits, including for severance benefits and vacation entitlement (but not for accrual of pension benefits), to the extent past service was recognized for such Continuing Employees under a comparable Benefit Plan immediately prior to the Closing, and to the same extent past service is credited under such plans or arrangements for similarly situated employees of the Purchaser. Notwithstanding the foregoing, nothing in this Section 8.04(a) shall be construed to require crediting of service that would result in (i) duplication of benefits, (ii) service credit for benefit accruals under a defined benefit pension plan, or (iii) service credit under a newly established plan for which prior service is not taken into account for employees of the Purchaser and its Affiliates generally.

(b) In the event of any change in the welfare benefits provided to Continuing Employees following the Closing and in the plan year in which the Closing occurs, the Purchaser shall use commercially reasonable efforts to cause (i) the waiver of all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Continuing Employees under any such welfare benefit plans to the extent that such conditions, exclusions or waiting periods would not apply in the absence of such change, and (ii) for the plan year in which the Closing occurs, the crediting of each Continuing Employee with any co-payments and deductibles paid prior to any such change in satisfying any applicable deductible or out-of-pocket requirements after such change.

(c) During the Pre-closing Period, the Company agrees that the form and content of any written or oral representations or communications to any Company Employee with regard to the Purchaser or its Affiliates or this Agreement or the transactions contemplated hereby shall be first reviewed and approved by the Purchaser.

(d) The Company shall terminate or cause to be terminated any SIMPLE IRA Plan maintained by any of the Target Companies effective as of 11:59 p.m. on December 31, 2014, including the delivery to all employees, on or before October 31, 2014, of a written notice regarding such termination.

(e) Prior to Closing, the Company shall terminate or shall cause to be terminated without liability to any Acquired Company all severance, management, consulting or similar Contracts (other than the Indemnification Agreements) between any Acquired Company, on the one hand, and Horn, Cobb, Eos Management, L.P., the E Sellers, or any designee of the E Sellers or an Affiliate of E Sellers that is a manager of the Acquired Companies, on the other hand, and shall cause each such party to execute unconditional releases of all Claims of any nature whatsoever (other than any indemnification claims), whether now known or unknown, suspected or unsuspected, that such Person now has, at any time previously had or shall or may have in the future arising out of, in connection with or with respect to such Contracts.

(f) Nothing in this Section 8.04 shall be construed as an amendment of, or undertaking to amend, any Benefit Plan or Purchaser Plan or to prevent the amendment or termination of any Benefit Plan or Purchaser Plan in accordance with its terms. Nothing in this Section 8.04 shall limit the right of the Purchaser or its Affiliates to terminate the employment of any Continuing Employee at any time, subject to any rights to severance or other separation benefits accrued as of the applicable termination date under a Purchaser Plan. The parties hereto acknowledge and agree that all provisions contained in this Section 8.04 with respect to employees are included for the sole benefit of the respective parties hereto and shall not create any right (i) in any other Person, including any employees, former employees, any participant in any Benefit Plan or Purchaser Plan or any beneficiary thereof or (ii) to continued employment with any of the Purchaser or its Affiliates, or particular benefits or coverage in any Benefit Plan or Purchaser Plan.

SECTION 8.05. *Supplemental Disclosure*. From time to time during the Pre-closing Period, the Sellers and the Company shall have the continuing obligation promptly to supplement or amend the Seller Disclosure Schedule (in the case of the Sellers) or the Company Disclosure Schedule (in the case of the Sellers and the Company) with respect to any matter hereafter arising or discovered which would be required to be set forth or described in any section of the Seller Disclosure Schedule or the Company Disclosure Schedule in order for the representations and warranties of the Sellers and the Company to be true and correct at all times during such period; *provided, however*, that except as set forth in the following sentence, for the purposes of the rights and obligations of the parties hereunder (including for purposes of the conditions to the obligations of the parties set forth in Article X and the indemnification provisions contained in Article XII), the Seller Disclosure Schedule and the Company Disclosure Schedule will be deemed to include only the information contained therein on the date of this Agreement and will be deemed to exclude all information contained in any such supplement or amendment. Notwithstanding the foregoing, (a) if the Seller Disclosure Schedule and/or the Company Disclosure Schedule are supplemented or amended during the Pre-closing Period to reflect any matter (i) that first arises after the date of this Agreement and, if existing on the date of this Agreement, would have been required to be set forth in the Seller Disclosure Schedule and/or the Company Disclosure Schedule in order for the representations and warranties of the Sellers and the Company to be true and correct and (ii) that does not arise, in whole or in substantial part, from a breach by the Sellers or the Company of any of their covenants or agreements set forth in this Agreement, and (b) if the Sellers and the Company acknowledge in writing to the Purchaser when such supplement or amendment is delivered to the Purchaser that the matter disclosed in such supplement or amendment would cause any of the conditions to the obligations of the Purchaser set forth in Article X to not be fulfilled at or prior to the Closing, and the Purchaser nonetheless proceeds with the Closing of the transactions contemplated by this Agreement, then, unless otherwise agreed in writing by the parties, such supplement or amendment shall be deemed to have qualified, as applicable, the representations and warranties made as of the Closing Date by the Sellers or the Company (as applicable) pursuant to Article III, Article IV, Article V and Article VI (or elsewhere in this Agreement, if relevant) as applicable, and to have cured any breach of any such representation or warranty made as of the Closing Date that may have otherwise existed hereunder in the absence of such supplement or amendment for purposes of determining any indemnification rights of the Purchaser Indemnified Parties contained in this Agreement.

SECTION 8.06. *Exclusive Dealing.*

(a) During the Pre-closing Period, no Seller, Blocker Company or Target Company shall, nor shall any of them authorize or permit any of their respective Affiliates or any of their respective affiliates, agents, representatives or employees to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue the initiation or submission of any expression of interest, inquiry, proposal or offer from any Person (other than the Purchaser) relating to or in connection with an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any non-public information to, any Person (other than the Purchaser) concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) with any Person (other than the Purchaser) with regard to or in connection with an Acquisition Proposal. On the date hereof, the Sellers, the Blocker Companies and the Target Companies shall immediately cease and cause to be terminated all existing discussions or negotiations with any Persons conducted heretofore with respect to an Acquisition Proposal, including any discussion or negotiations and other work related to the possible filing of a registration statement under the Securities Act with respect to an initial public offering of Equity Interests in the Company (or a successor company).

(b) In addition, the Sellers, the Blocker Companies and the Target Companies shall promptly (and in any event within 48 hours after receipt thereof) notify the Purchaser in writing of any Acquisition Proposal received by any of them.

SECTION 8.07. *Business Confidential Information.*

(a) Each Seller hereby acknowledges that, by reason of its direct or indirect ownership of the Company or any Blocker Company, as applicable, it has acquired, and may acquire after the date of this Agreement pursuant to this Agreement or in connection with the transactions contemplated hereby, confidential or proprietary information relating to the business, affairs, operations, assets, liabilities, personnel, results of operations and financial condition of the Blocker Companies and the Target Companies ("Business Confidential Information"). Each Seller further acknowledges that the Purchaser and the Target Companies would be irreparably damaged if, at any time after the Closing, any Business Confidential Information possessed by such Seller or any of its Affiliates, officers, directors, employees, representatives or agents were disclosed to or used by any Person other than the Purchaser or its Affiliates.

(b) From and after the Closing, each Seller covenants and agrees that it shall not, and shall cause its Affiliates not to, and that it shall cause its officers, directors, employees, representatives and agents not to, use or disclose any Business Confidential Information, except with the prior written consent of the Purchaser, except to the extent that such information (i) is generally available to and known by the public through no fault of any Seller, any Acquired Company or any of their respective Affiliates or representatives; or (ii) is lawfully acquired by any Seller or any of their respective Affiliates or representatives after the Closing from sources which, to the Knowledge of the Sellers and the Company, are not under any duty of confidentiality or secrecy to the Purchaser or the Target Companies. Furthermore, no Seller shall disclose the terms of this Agreement to any third party (other than its limited partners, prospective limited partners, officers, directors, employees, representatives, advisors and agents who need such information in connection with the consummation or implementation of the transactions contemplated hereby and who are subject to similar obligations of confidentiality and restrictions on use as are applicable to the Sellers under this Section 8.07), except as permitted in connection with any public announcement authorized under the express terms of this Agreement.

(c) If any Seller is requested or required by any Governmental Authority to disclose any Business Confidential Information, then such Seller shall provide the Purchaser with prompt written notice of such request or requirement to the extent such notice is not prohibited by applicable Law. The parties shall cooperate, at the Purchaser's sole expense, in attempting to obtain any reasonable protective relief that the Purchaser chooses to seek with respect to any Business Confidential Information. If, after the parties have had a reasonable opportunity to seek such relief, a Seller is compelled to disclose any Business Confidential Information, such Seller may nonetheless disclose only the portion of such Business Confidential Information which its legal counsel advises it is compelled to disclose.

SECTION 8.08. *Non-Competition; Non-Solicitation.*

(a) Each of Cobb and Horn hereby acknowledges that he is familiar with the Trade Secrets and Business Confidential Information of the Target Companies. Each of Cobb and Horn further acknowledges and agrees that the covenants and agreements set forth in this Section 8.08 were a material inducement to the Purchaser to enter into this Agreement and to perform its obligations hereunder, and that the Purchaser would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the parties hereto if Cobb, Horn or any of their respective Affiliates were to breach any of the provisions of this Section 8.08.

(b) Each of Cobb and Horn, in further consideration of the Purchase Price to be paid by the Purchaser hereunder and in order to protect the value of the goodwill of the Target Companies, agrees that, until the fourth anniversary of the Closing Date, neither Cobb nor Horn shall (and each shall cause his Affiliates not to), directly or indirectly, acting alone or as an owner, proprietor, officer, director, stockholder, member, partner, employee, joint venturer, agent, advisor, consultant, independent contractor, representative, investor, or in any other capacity with respect to any other Person, (i) engage or participate in a Competing Business, (ii) own any interest in or manage, control or participate in the ownership, management or control of a Competing Business, (iii) provide any services to any Person with respect to a Competing Business, (iv) contact, solicit or enter into any Contract with any Company Employee or other agent or independent contractor of any Acquired Company relating to a Competing Business or (v) seek to divert any supplier, customer or any other Person that, to the Knowledge of Cobb or Horn, has a business relationship with any Acquired Company or with which any Acquired Company is actively planning or pursuing a business relationship, in the case of each clause (i) through (v), anywhere in the Restricted Territories. As used herein, the term "Competing Business" means any business, operations or activities relating to the mining, production, sale, marketing, transportation or distribution of proppant (specifically meaning raw frac sand, resin coated sand, resin coated ceramic and ceramic proppant) for any use in connection with hydraulic fracturing of oil and gas wells or any other use relating to the exploration for, or development or production of, oil, gas or other hydrocarbons. Each of Cobb and Horn represents that the businesses of the Target Companies have been or are contemplated to be conducted throughout the United States, Canada and Mexico (the "Restricted Territories") and that the geographic restrictions set forth in this Section 8.08 are reasonable and necessary to protect the goodwill of the Target Companies. Notwithstanding the foregoing provisions of this paragraph (a), such provisions shall not be construed to prohibit Cobb or Horn from owning or acquiring an investment of not more than 5% of the then-outstanding capital stock of any publicly-held Person whose stock is traded on a securities exchange, so long as neither Cobb, Horn nor any of their respective Affiliates directly or indirectly participates, whether as an officer, director, employee, manager, consultant, advisor, independent contractor or in any other capacity, in, or otherwise assists, such Person in the management of its business and operations.

(c) Each of the Sellers further agrees that until the third anniversary of the Closing Date it or he shall not (and shall cause its or his respective Affiliates not to) directly, or indirectly through another Person, (i) solicit, induce or attempt to solicit or induce, any employee of any of the Target Companies to leave the employ of the applicable Target Company, except that the foregoing will not preclude the solicitation of any such employee resulting from general advertisements for employment placed by a Seller or its or his Affiliates (including any recruitment efforts conducted by any recruitment agency; *provided* that the Sellers, and their Affiliates have not directed such recruitment efforts at any of the employees of the Target Companies) or (ii) hire any former employee of any of the Target Companies unless at least one year has elapsed since the date of termination of his or her employment with the Target Companies; *provided*, *further*, that Sam Simons shall be permitted to continue to serve as Cobb's part-time pilot after the Closing in a manner that does not unreasonably interfere with his ability to perform full time employment duties with the Company.

(d) If, at the time of enforcement of the covenants contained in this Section 8.08 (the "Restrictive Covenants"), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court or arbitrator shall be allowed and directed to revise the restrictions contained herein to cover the maximum period, scope and area permitted by Law. Each party has consulted with legal counsel regarding the Restrictive Covenants and based on such consultation has determined and hereby acknowledges that the Restrictive Covenants are reasonable in terms of duration, scope and area restrictions and are necessary to protect the goodwill of the Target Companies and their businesses and the substantial investment in such Persons made by the Purchaser. Each party further agrees that it will not challenge the reasonableness of the duration, scope and area restrictions in any Claim with respect to the Restrictive Covenants, regardless of who initiates such Claim.

(e) If a party or its Affiliates breaches any of the Restrictive Covenants, the other parties shall have the right and remedy to have the Restrictive Covenants specifically enforced by any court of competent jurisdiction, it being agreed that any breach of the Restrictive Covenants would cause irreparable injury to the Purchaser and the Target Companies, and that money damages would not provide an adequate remedy to the Purchaser and the Target Companies in the event of such a breach.

(f) Notwithstanding anything to the contrary contained in this Agreement, each of Kleemeier Trust, Alexander Springer, Robbie Sage, Van Arsdale Family Trust, Monica Bower, Cindy Rike, Aaron Kent, Denny Luke and the E Sellers shall not be considered Affiliates of Horn or Cobb for purposes of this Section 8.08.

SECTION 8.09. *Blocker Company Name Changes*. In the case of each Blocker Company, no later than two Business Days prior to the Closing Date, the E Sellers shall file, or cause to be filed, such certificates and other documents, including amendments to such Blocker Company's Organizational Documents, and shall take all other steps, in each case, that are necessary to change the name of such Blocker Company to a name specified by the Purchaser that does not contain the terms "Eos" or any derivative thereof.

SECTION 8.10. *No Right of Contribution from any Target Company*. Notwithstanding any provision of this Agreement to the contrary or any right or remedy provided by any Law (including common law) or otherwise, from and after the Closing, (a) no Target Company shall be liable or otherwise responsible to any Seller as a co-warrantor or co-obligor, for contribution and otherwise in any manner or based on any legal theory or cause of action on account of, or with respect to, the breach by the Company of any representation or warranty contained in this Agreement or any covenant or agreement contained in this Agreement to be performed prior to or at the Closing and (b) the liabilities and obligations of the Sellers to the Purchaser and any other Persons arising under or in connection with this Agreement and the transactions contemplated hereby shall not be decreased, diminished or otherwise affected in any respect or in any manner or otherwise subject to any set off, counter claim or any other adjustment on account of the limitation of the liability of any Target Company as described in clause (a) above.

SECTION 8.11. *Seller Release.* Effective as of the Closing, the Sellers do for themselves and their officers, directors, stockholders, Affiliates, employees, partners, heirs, beneficiaries, successors and assigns, if any, hereby irrevocably and unconditionally release and absolutely forever discharge the Acquired Companies and their respective officers, directors, stockholders, Affiliates, employees, administrators and agents (each, a "Company Released Party") from and against all Seller Released Matters. As used herein, the term "Seller Released Matters" means any and all Claims, damages, debts, liabilities, obligations (including any rights of contribution or indemnity obligations), costs, expenses (including attorneys' and accountants' fees and expenses), actions and causes of action of any nature whatsoever, whether now known or unknown, suspected or unsuspected, that the Sellers now have, at any time previously had, or shall or may have in the future arising with respect to their direct or indirect ownership interest in the Acquired Companies or by virtue of or in any matter related to any actions or inactions with respect to the Acquired Companies, in each case on or before the Closing Date; *provided*, that the Seller Released Matters shall not include (i) any rights granted to the Sellers under this Agreement or the Seller Documents or the Company Documents, (ii) in the case of any Seller that is an employee of a Target Company, rights to compensation accrued prior to the Closing Date under Benefit Plans provided to the Purchaser prior to the date hereof, or (iii) any rights of indemnification pursuant to any Indemnification Agreement or the Organizational Documents of the Acquired Companies with respect to actions or events that took place prior to the Closing. Each Seller hereby represents and warrants that it or he has not assigned any Claims released or purported to be released pursuant to this Section 8.11 to any other Person.

SECTION 8.12. *Excluded Contract Claims.*

(a) From and after the Closing, the Seller Representative shall have the sole right in the name of Great Northern Sand LLC ("GNS") or Proppants, at the sole cost and expense of the Sellers, to take any reasonable action necessary to pursue any Claims arising under the Excluded Contract. If any Target Company is successful in obtaining recovery in respect of such Claims, the Purchaser and the Company shall cause such Target Company to, not later than two Business Days following the recovery of funds in respect of such Claims (subject to the payment in full of all costs and expenses for which the Sellers are responsible under this Section 8.12), pay to the Seller Representative, for the benefit of the Sellers, any funds recovered by them in respect of such Claims. Notwithstanding the foregoing, the Sellers shall not be entitled to any recovery in relation to the Excluded Contract, whether by consent to settlement of Claims or otherwise, unless (i) the terms of such recovery expressly provide for the unconditional release of any Claims brought by the counterparty to the Excluded Contract against GNS or Proppants and the unconditional termination, cancellation or release of the Lien identified in Schedule 8.12 hereto, or (ii) the full amount of any such recovery is deposited into a third-party escrow account with an escrow agent reasonably acceptable to the Purchaser on terms substantially similar to those set forth in the Escrow Agreement (other than the release provisions, which shall be as set forth in the immediately following sentence). Any amount so retained in such escrow account shall remain in such escrow account until the earlier of the resolution or settlement of all Claims related to the Excluded Contract that may be asserted against GNS or Proppants or the expiration of the applicable statute of limitations period related to each such Claim in order to pay any indemnification obligations pursuant to Section 12.02(h); *provided*, that amounts may be disbursed to the Seller Representative from such escrow from time to time to pay the Seller Representative's costs of defending Claims pursuant to Section 8.12(b).

(b) Notwithstanding the procedures described in Section 12.04, in the case of any Claims brought by the counterparty to the Excluded Contract against any of the Target Companies or the Purchaser, the Seller Representative shall conduct and direct the defense of such Claims with counsel selected by it, and the costs and expenses incurred in connection with such defense shall be borne and paid by the Seller Responsible Parties (on behalf of the Sellers). Except as provided in the immediately preceding sentence, the procedures set forth in Section 12.04 shall govern any Indemnity Claims arising out of, associated with or in respect of the Excluded Contract.

SECTION 8.13. *Cash Sweep; Termination of Certain Contracts.*

(a) Prior to the Closing, the Sellers shall use commercially reasonable efforts to cause all of the Cash held by the Acquired Companies (other than an amount equal to $50,000) to be paid through cash distributions (whether by way of dividends and/or redemptions, in each case in accordance with the Organizational Documents of the Acquired Companies and applicable Law) with record and payment dates prior to the Closing Date, directly or indirectly, to the Sellers, with the result that, to the extent possible under the circumstances, (i) the aggregate balances of the cash account of the Target Companies shall be $50,000 (the "Estimated Closing Cash") and (ii) the aggregate cash balances of the cash account of the Blocker Companies are zero, in each case at the opening of business on the Closing Date.

(b) Prior to the Closing, the Contracts set forth on Schedule 8.13(b) hereto shall be terminated, and the Target Companies shall be released from any and all Claims and liabilities associated with such Contracts.

SECTION 8.14. *Further Assurances*. Each party shall execute and deliver, from time to time both before and after the Closing, such certificates, agreements and other documents and take such other actions as the other parties may reasonably request in order to consummate, implement, complete or perfect the transactions contemplated hereby.

SECTION 8.15. *Accounts Receivable Settlement*. During the period of 90 days following the Closing Date (the "Receivables Settlement Period"), the Purchaser shall cause the Target Companies to follow their regular collection practices to collect any Receivables that are aged greater than 90 days as of the Closing Date (the "Subject Receivables"). No earlier than 90 days after the expiration of the Receivables Settlement Period, the Purchaser may deliver a written notice to the Seller Representative identifying any Subject Receivables which have not been collected by the Target Companies and which the Purchaser elects in its sole discretion to require the Seller Representative to repurchase in accordance with the terms of this Section 8.15 (any such Receivables being hereinafter collectively referred to as "Repurchased Receivables"). Within ten days after the delivery of such notice to the Seller Representative, (i) the Target Companies shall transfer to the Seller Representative, for the account of the Sellers, and the Seller Representative shall acquire and accept from the Target Companies, on behalf of the Sellers, the Repurchased Receivables and (ii) the Sellers shall pay to the Purchaser, in accordance with their Pro Rata Shares, an amount in cash equal to the value of the Repurchased Receivables reflected in the Final Working Capital Amount, less any amount previously paid to the Company by the obligor thereon. After the transfer by the Company of any Repurchased Receivables pursuant to this Section 8.15, the Seller Representative may continue to follow the regular collection practices of the Company to collect the Repurchased Receivables, including contacting the obligors thereon, but the Seller Representative shall not commence any Legal Proceedings against any obligor in respect thereof, without obtaining the prior written consent of the Purchaser, such consent not to be unreasonably withheld.

SECTION 8.16. *Company Release; Indemnification and Insurance.*

(a) Effective as of the Closing, the Company does for itself and its officers, directors, stockholders, Affiliates (including the other Target Companies), employees, partners, heirs, beneficiaries, successors and assigns, if any, hereby irrevocably and unconditionally release and absolutely forever discharge the Sellers and their respective officers, directors, managers, members, partners, stockholders, Affiliates, employees, administrators and agents (each, a "Seller Released Party") from and against all Company Released Matters. As used herein, the term "Company Released Matters" means any and all Claims, damages, debts, liabilities, obligations (including any right of contribution or indemnity obligations), costs, expenses (including attorneys' and accountants' fees and expenses), actions and causes of action of any nature whatsoever, whether now known or unknown, suspected or unsuspected, that the Target Companies may have, or may have in the future, arising from any violation of the duty of care on the part of a Seller Released Party in connection with the management and operation of the business of the Target Companies at any time prior to the Closing Date; *provided*, that the Company Released Matters shall not include (i) any rights granted to the Purchaser or the Acquired Companies under this Agreement or the Purchaser Documents, (ii) any rights or Claims that any Target Company has against any Continuing Employees or (iii) any right or Claim that one Target Company has against another Target Company.

(b) During the period beginning on the Closing Date and ending on the sixth anniversary thereof, the Purchaser shall cause the Acquired Companies to maintain in effect the provisions for the indemnification of officers, directors, managers or controlling Persons of the Acquired Companies contained in the Organizational Documents of the Acquired Companies as in effect as of the date hereof as they apply, to the extent permitted by applicable Law, to Losses arising out of any actions or omission on the part of such officers, directors, managers or controlling persons occurring prior to the Closing Date.

(c) Prior to the Closing, the Company shall arrange for the purchase, at the sole cost and expense of the Sellers, of an officers' and directors' liability insurance policy applicable to the six-year period beginning on the Closing Date and covering the Persons who are or were, as of or prior to the Closing Date, officers, directors, managers or controlling Persons of the Acquired Companies with respect to actions and omissions of such Persons occurring prior to and on the Closing Date, it being understood that such insurance shall provide substantially similar levels of coverage as the officers' and directors' liability insurance policy of the Company in effect as of the date hereof.

(d) The provisions of this Section 8.16 are intended to be for the benefit of, and will be enforceable by, each such Person entitled to indemnification, his or her heirs and his or her representatives.

SECTION 8.17. *Return of Excess Retention Award Amount*. If, as of the date of completion of the Capacity Expansion Project, any individuals set forth on Schedule 8.17 hereto have not received and are not entitled to receive payment of the amount set forth opposite their names on such Schedule, the Purchaser shall promptly pay to the Seller Representative, for the account of the Sellers, an amount in cash equal to the Retention Award Amount, less the Final Retention Award Amount.

ARTICLE IX
TAX MATTERS

SECTION 9.01. *Transfer Taxes*. Each of the Purchaser, on the one hand, and the Sellers (severally in accordance with their respective Pro Rata Shares), on the other hand, shall be responsible for 50% of all Transfer Taxes. Each of the parties hereto shall prepare and file, and shall fully cooperate with each other with respect to the preparation and filing of any Tax Returns or other filings relating to Transfer Taxes as may be required.

SECTION 9.02. *Tax Returns.*

(a) All Tax Returns for Taxes and Tax items relating to the operations or assets of the Target Companies but not imposed on the Target Companies (including the IRS 1065 and related K-1s) for taxable periods (but not Straddle Periods) ending on or prior to the Closing Date ("Flow-Through Returns") shall be prepared and filed under the control of the Seller Representative. The Seller Representative shall provide the Purchaser with copies of completed drafts of such Tax Returns that are to be filed after the Closing Date no later than ten days prior to the due date for filing thereof (including applicable extensions) for the Purchaser's review and approval (such approval not to be unreasonably withheld, conditioned or delayed) and shall consider in good faith all comments received no later than three days prior to the due date for filing thereof (including applicable extension).

(b) The Seller Representative shall prepare or cause to be prepared all Tax Returns for the Acquired Companies that are due on or before the Closing Date and shall pay or cause to be paid the Taxes shown as due thereon, subject to Section 9.02(f). All such Tax Returns shall be prepared in a manner consistent with past practice except as otherwise required by applicable Law and the agreements in Section 9.02(e).

(c) Other than Flow-Through Returns described in Section 9.02(a), and subject to Section 9.01, the Purchaser shall control the preparation and filing of all other Tax Returns for Pre-Closing Tax Periods and Straddle Periods with respect to each Acquired Company that have not yet been filed as of the Closing Date. With respect to all Pre-Closing Tax Periods and Straddle Periods, such Tax Returns shall be prepared in a manner consistent with past practice unless otherwise required by applicable Law and consistent with the applicable Flow-Through Returns and the agreements in Section 9.02(e). The Purchaser shall provide the Seller Representative with copies of all income Tax Returns for any Pre-Closing Tax Period or Straddle Period no later than 30 days prior to the due date for filing thereof (including applicable extensions) for the Seller Representative's review and approval (such approval not to be unreasonably withheld, conditioned or delayed).

(d) Not later than five days prior to the due date for the payment of any Indemnified Taxes shown as due with respect to any Tax Return the preparation and filing of which is controlled by the Purchaser pursuant to Sections 9.01 or 9.02(c), the Seller Representative, on behalf of the Sellers, shall pay the amount of Indemnified Taxes shown as due in respect of such Tax Return. For the avoidance of doubt, no payment made pursuant to this Section 9.02(d) shall excuse the Sellers from their indemnification obligations pursuant to Article XII to the extent the amount of Indemnified Taxes as ultimately determined, on audit or otherwise, for the periods covered by such Tax Returns exceeds the amount of the payment made pursuant to this Section 9.02(d).

(e) *Tax Reporting*.

(i) The parties to this Agreement hereby agree that the transaction under this Agreement shall cause a deemed termination of the Company for U.S. federal income tax purposes pursuant to Section 708(b)(1)(B) of the Code as of the end of the Closing Date. Such parties shall file all Tax Returns in a manner consistent with the treatment provided herein and shall not take any position that is inconsistent with such treatment.

(ii) The parties to this Agreement agree that any income associated with the Green Field Deferred Revenue or the BH Deferred Revenue that has not been previously included in income of the applicable Acquired Company shall be included in income on the applicable Acquired Companies for the year ended on the Closing Date and reported as income on the Flow-Through Returns prepared by the Seller Representation under Section 9.02(a) and such amount shall not be treated as a "liability" of the Company as of the end of the Closing Date for income Tax purposes. Unless required by a determination of a Governmental Authority that is final, no party hereto shall file a Tax Return inconsistently with this provision.

(iii) The sale and purchase of the Pierpont Interests shall be treated for federal, state and local income and franchise Tax purposes as purchases described in situation 2 of Revenue Ruling 99-6 (such that the purchase of the Pierpont Interests in accordance with this Agreement will be treated by the parties as a purchase of Equity Interests in the Company by the Purchaser and a sale of the Pierpont Interests by Bon Accord and Cobb) and no Party nor any Affiliate thereof shall take any federal, state or local income or franchise Tax position inconsistent with such treatment.

(f) Notwithstanding anything to the contrary in this Agreement (including this Article IX or Article XII), the Sellers and the Seller Representative shall have no liability under this Agreement (including via the Escrow Agreement) with respect to any Taxes (or related Losses) that is not an Indemnified Tax (or related Loss).

SECTION 9.03. *Amended Returns; Tax Elections.*

(a) The Purchaser shall not, and shall cause the Acquired Companies not to, (i) make any amendment of any Tax Returns of the Acquired Companies to the extent such Tax Return relates to any Pre-Closing Tax Period or (ii) make any election that has retroactive effect to any Pre-Closing Tax Period, in each case, only and to the extent such amendment or election would materially adversely affect any Seller without such Seller's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

(b) At the written request of the Purchaser, the Company shall make a Section 754 election on the federal income Tax Return for the period that ends on the Closing Date if such election is not then currently in effect.

(c) No election shall be made under Section 338 of the Code (or any similar provision under state, local, or foreign Laws) with respect to the purchase of the Blocker Shares pursuant to this Agreement.

SECTION 9.04. *Straddle Periods*. In the case of any Straddle Period, the amount of any Taxes of the Acquired Companies not based upon or measured by income, activities, events, the level of any item, gain, receipts, proceeds, profits or similar items for the Pre-Closing Tax Period will be deemed to be the amount of such Taxes for the entire Tax period multiplied by a fraction, the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period. The amount of any other Taxes for a Straddle Period that relate to the Pre-Closing Tax Period will be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose the taxable period of any partnership will be deemed to end as of the close of business on the Closing Date); *provided*, *however*, that any item determined on an annual or periodic basis (such as deductions for depreciation or real estate Taxes) shall be apportioned on a daily basis.

SECTION 9.05. *Tax Refunds and Benefits.* The amount of any cash refund or credit actually used to offset any cash Taxes otherwise due and payable that, in each case, is attributable to the Pre-Closing Tax Period received by the Purchaser or the Acquired Companies shall be for the account of the Sellers, except to the extent that such refunds or credits (i) have been taken into account in determining the Final Working Capital Amount or Tax Liability Amount or (ii) are attributable to the carryback of losses generated post-Closing. To the extent Sellers have overpaid Taxes pursuant to the definition of "Tax Liability Amount," such overpayment shall be treated as a refund for the account of the Sellers that is received at the time the applicable Tax Return is filed showing such overpayment. Any such amount (including, in the case of any cash refund received, any interest thereon) shall be paid by the Purchaser or the Acquired Companies within five (5) days after any such refund is received or credit is realized, as the case may be. All refunds and credits as provided herein shall be computed assuming that the amount of BH Deferred Revenue included in income of the Acquired Companies for the year ended on the Closing Date (or portion of any Straddle Period ending on the Closing Date) shall be zero dollars.

SECTION 9.06. *Tax Proceedings*. This Section 9.06 (and not any provision in Article XII) shall control any audits, assessments, examinations, claims or other controversies or proceedings relating to any Tax matter. If notice of any such audit, assessment, examination, claim or other controversy or proceeding with respect to Taxes or Tax Returns of any Acquired Company is received by the Purchaser or any of its Affiliates that would be subject to indemnification pursuant to Article XII (a "Tax Proceeding"), the notified party shall inform the Seller Representative of such Tax Proceeding as soon as possible; provided, however, that failure to give such notice as provided herein shall not relieve the Sellers of their obligations under Article XII except to the extent that the Sellers are actually and materially prejudiced thereby. The Seller Representative shall control the conduct of any such Tax Proceeding that relates to Flow-Through Returns with counsel of its own choosing and the Purchaser shall control all other Tax Proceedings with counsel of its own choosing; *provided*, that (i) the party or parties not in control of the Tax Proceeding shall have the right, at their sole cost and expense, to reasonably participate in (which shall include the right to attend any negotiations or settlement meetings with

the relevant Taxing Authority) such Tax Proceeding, (ii) the controlling party shall keep the other party reasonably informed and consult seriously and in good faith with such other party and their tax advisors with respect to any issue relating to the Tax Proceeding, and (iii) the controlling party not settle any such Tax Proceeding without the other party's or parties' consent (which consent shall not be unreasonably withheld, conditioned or delayed).

SECTION 9.07. *Termination of Tax Sharing Agreements*. Any and all Tax allocation or Tax sharing agreements between any of the Acquired Companies, on the one hand, and any other Person, on the other, shall be terminated as of the Closing Date and, from and after the Closing Date, none of the Acquired Companies shall be obligated to make any payment pursuant to any such agreement for any past or future period.

SECTION 9.08. *Cooperation and Tax Record Retention*. The Purchaser shall promptly furnish to the Seller Representative such information as the Seller Representative may reasonably request with respect to Tax matters relating to the Acquired Companies for any taxable period beginning before the Closing Date. The Purchaser shall cooperate, and cause the Acquired Companies to cooperate, with the Seller Representative in connection with the Seller Representative's preparation of any Tax Returns pursuant to this Section 9.08. Notwithstanding anything else contained herein to the contrary, the Purchaser shall retain all books and records with respect to Tax matters pertinent to the Company relating to any Pre-Closing Tax Period until the expiration of the statute of limitations (taking into account any extensions thereof) applicable to such taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority.

SECTION 9.09. *Purchase Price Allocation*. Within 90 days following the Closing Date, the Purchaser shall cause to be prepared by KPMG and delivered to the Seller Representative a schedule allocating the Purchase Price (and all other amounts treated as consideration for federal income Tax purposes) attributable to the purchase of Equity Interests in the Company and the Pierpont Interests among the assets of the Company (including the covenants not-to-compete contained in Section 8.08(b)) for purposes of determining the allocation under Section 755 of the Code and the tax basis adjustments under Section 743 of the Code (the "Purchase Price Allocation"). During the 90 day period that the Purchase Price Allocation is being determined by KPMG, the Seller Representative shall have (i) access to KPMG and (ii) the right to participate in the process in which the Purchase Price Allocation is determined. The Purchase Price Allocation shall be reasonable and shall be prepared in accordance with Section 751 of the Code. The Purchase Price Allocation shall be deemed to be accepted by, and shall be conclusive and binding on, the Sellers except to the extent that the Seller Representative shall have delivered, within 30 days after the date on which the Purchase Price Allocation is delivered to the Seller Representative, a written notice to the Purchaser stating each and every item to which the Sellers take exception (it being understood that any amounts not disputed shall be final and binding). If a change proposed by the Seller Representative is disputed by the Purchaser, then the Purchaser and the Seller Representative shall negotiate in good faith to resolve such dispute. If, after a period of 30 days following the date on which the Seller Representative gives the Purchaser notice of any such proposed change, any such proposed change still remains disputed, then (i) to the extent that such change relates to the portion of the Purchase Price Allocation that is required to be reported on IRS Form 8308 in respect of the Section 751(a) exchange (as defined on such form), the Seller Representative and the Purchaser shall promptly refer their differences with respect to the applicable allocations to the Final Arbiter to be resolved in accordance with procedures substantially similar to those set forth in Section 1.04(d) and (ii) with respect to all changes other than those described in the preceding clause (i), the Seller Representative and the Purchaser shall each be entitled to adopt their own positions regarding the allocation of the Purchase Price among the assets of the Company for applicable Tax purposes. If the Purchase Price Allocation is mutually agreed to (or deemed accepted) pursuant to the foregoing provisions of this Section 9.09, then the parties and their Affiliates shall file all Tax Returns in a manner consistent with the Purchase Price Allocation.

SECTION 9.10. *Disputes*. The Seller Representative and the Purchaser shall attempt in good faith to resolve any disagreements regarding any Tax Returns covered hereby prior to the due date for filing. In the event that the Seller Representative and the Purchaser are unable to resolve any dispute with respect to such Tax Returns at least ten days prior to the due date for filing, they shall promptly refer their differences to the Final Arbiter to be resolved in accordance with the provisions of Section 1.04(d).

ARTICLE X
CONDITIONS TO CLOSING

SECTION 10.01. *Conditions to the Obligations of the Parties*. The obligation of the Purchaser and each Seller to consummate the transactions contemplated hereby is subject to the fulfilment at or prior to the Closing of the following conditions:

(a) *HSR Act*. Any "waiting period" or extension thereof applicable under the HSR Act to the transactions contemplated by this Agreement shall have expired or been terminated.

(b) *No Order; No Legal Proceedings*. No Order shall be in effect prohibiting, enjoining or restraining the consummation of the transactions contemplated by this Agreement. No Governmental Authority shall have commenced a Legal Proceeding against the Purchaser, the Sellers, any Blocker Company or any Target Company seeking to enjoin or prohibit the consummation of the transactions contemplated hereby.

SECTION 10.02. *Conditions to the Obligations of the Purchaser*. The obligation of the Purchaser to consummate the transactions contemplated hereby is subject to the fulfilment (or waiver in writing by the Purchaser) at or prior to the Closing of the following conditions:

(a) *Accuracy of Representations*. The representations and warranties of the Sellers and the Company made in this Agreement, to the extent they are subject to Materiality Qualifications, shall be true and correct in all respects, and such representations and warranties, to the extent they are not subject to Materiality Qualifications, shall be true and correct in all material respects, in each case on and as of the date of this Agreement and as of the Closing Date (in each case, other than representations and warranties that address matters only as of a specific date, which shall be true and correct or true and correct in all material respects (as the case may be) as of such date). In addition, the Purchaser shall have received a certificate, dated as of the Closing Date, of the Seller Representative and a duly authorized officer of the Company, affirming that the condition set forth in this paragraph (a) (as it relates to the representations and warranties of the Sellers or the Company, as the case may be) has been satisfied.

(b) *Performance of Covenants*. Each Seller and the Company shall have performed and complied with in all material respects all covenants and agreements contained in this Agreement which are required to be performed or complied with by them at or prior to the Closing. In addition, the Purchaser shall have received a certificate, dated as of the Closing Date, of the Seller Representative and a duly authorized officer of the Company, affirming that the condition set forth in this paragraph (b) (as it relates to the covenants and agreements of the Sellers or the Company, as the case may be) has been satisfied.

(c) *Closing Deliveries.* The Purchaser shall have received the items to be delivered or caused to be delivered by the Sellers pursuant to Section 2.03.

(d) *Required Consents*. Each of the Consents set forth in Schedule 10.02(d) hereto (the "Material Consents") shall have been obtained by the Company in form and substance reasonably satisfactory to the Purchaser and shall be in full force and effect. Copies of each of the Material Consents shall have been delivered to the Purchaser.

(e) *Absence of Material Adverse Effect*. Since the date of this Agreement, there shall have been no Material Adverse Effect.

(f) *Purchase of Class P Common Units*. The Company shall have consummated the purchase of all of the outstanding Class P Common Units (other than those owned by Horn and Cobb) pursuant to the Redemption Agreements.

SECTION 10.03. *Conditions to the Obligations of the Sellers*. The obligations of the Sellers to consummate the transactions contemplated hereby are subject to the fulfilment (or waiver in writing by each of the Sellers) at or prior to the Closing of the following conditions:

(a) *Accuracy of Representations*. The representations and warranties of the Purchaser made in this Agreement, to the extent they are subject to Materiality Qualifications, shall be true and correct in all respects and such representations and warranties, to the extent they are not subject to Materiality Qualifications, shall be true and correct in all material respects, in each case on and as of the Closing Date (other than representations and warranties that address matters only as of a specific date, which shall be true and correct or true and correct in all material respects (as the case may be) as of such date). In addition, the Seller Representative shall have received a certificate, dated as of the Closing Date, of a duly authorized officer of the Purchaser, affirming that the condition set forth in this paragraph (a) has been satisfied.

(b) *Performance of Covenants*. The Purchaser shall have performed and complied in all material respects with all covenants and agreements contained in this Agreement that are required to be performed or complied with by it at or prior to the Closing. In addition, the Seller Representative shall have received a certificate, dated as of the Closing Date, of a duly authorized officer of the Purchaser, affirming that the condition set forth in this paragraph (b) has been satisfied.

(c) *Closing Payments and Deliveries.* The Purchaser shall have made the payments described in Section 2.02 and the Seller Representative shall have received the items to be delivered or caused to be delivered by the Purchaser pursuant to Section 2.04.

ARTICLE XI
TERMINATION

SECTION 11.01. *Termination.* This Agreement may be terminated at any time prior to the Closing as follows:

(a) *Mutual Agreement.* By the mutual written agreement of the Purchaser and the Seller Representative;

(b) *Expiration*. By either the Purchaser or the Seller Representative, upon written notice to the other, if the Closing shall not have occurred prior to or on the Expiration Date (which date may be extended by the mutual written agreement of the Purchaser and the Seller Representative); *provided, however*, that (i) the Purchaser may not terminate this Agreement pursuant to this paragraph (b) if the failure of the Closing to occur on or before such date is attributable in whole or in any substantial part to the breach by the Purchaser of any of its representations, warranties, covenants or obligations contained in this Agreement and (ii) the Seller Representative may not terminate this Agreement pursuant to this paragraph (b) if the failure of the Closing to occur on or before such date is attributable in whole or in any substantial part to the breach by the Sellers, the Company or the Seller Representative of any of its representations, warranties, covenants or obligations contained in this Agreement;

(c) *Final Order*. By either the Purchaser or the Seller Representative, upon written notice to the other, if consummation of the transactions contemplated hereby would violate any non-appealable final Order of a Governmental Authority having competent jurisdiction with respect to the parties or the transactions contemplated hereby; or

(d) *Breach*. By the Purchaser or the Seller Representative, upon written notice to the other, if there shall have occurred a breach of any representation, warranty, covenant or agreement contained in this Agreement that would give rise to the failure of the conditions to the obligations of the Purchaser or the Sellers set forth in Section 10.02(a) or (b) or Section 10.03(a) or (b) (as the case may be) and such breach shall not have been cured within 20 days after the giving of written notice thereof to the breaching party or parties, except that the Purchaser or the Seller's Representative shall only be entitled to terminate this Agreement pursuant to this paragraph (d) if (i) in the case of the Purchaser, the Purchaser is not in breach in any material respect in the performance of its obligations under this Agreement or (ii) in the case of the Seller Representative, none of the Sellers, the Company or the Seller Representative is breach in any material respect in the performance of its obligations under this Agreement.

SECTION 11.02. *Effect of Termination.*

(a) If this Agreement is terminated pursuant to Section 11.01, this Agreement will immediately become void and of no further force and effect and, except as expressly provided in paragraphs (b) and (c) below, all rights and obligations of the parties hereunder will terminate without liability on the part of any party (or any stockholder, director, officer, employee, agent, subsidiary or Affiliate of any party) to any other party to this Agreement.

(b) Notwithstanding anything to the contrary in this Section 11.02, the provisions of this Section 11.02 and Sections 14.01, 14.02, 14.03, 14.04, 14.07, 14.09, 14.10, 14.11 and 14.12 shall survive any termination of this Agreement.

(c) Nothing in this Section 11.02 or elsewhere in this Agreement shall relieve any party from liability (i) for any breach occurring prior to the termination of this Agreement, (ii) pursuant to the Sections identified in paragraph (b) above as surviving any termination of this Agreement or (iii) for fraud.

ARTICLE XII
INDEMNIFICATION

SECTION 12.01. *Survival.*

(a) The representations and warranties of each of the parties contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing and shall continue in effect until (i) in the case of all representations and warranties other than the Fundamental Representations, the first anniversary of the Closing Date and (ii) in the case of the Fundamental Representations, the date that is 30 days following the expiration of the applicable statute of limitations (as the same may be extended by operation of applicable Law or otherwise) with respect to the subject matter thereof.

(b) The covenants and agreements of the parties contained in this Agreement shall survive the Closing and shall continue in effect until such covenants and agreements have been fully performed in accordance with the terms thereof.

(c) The period during which any representation, warranty, covenant or agreement contained in this Agreement survives after the Closing Date is referred to herein as the "Survival Period." Rights to indemnification shall survive only until the expiration of the applicable Survival Period; *provided*, *however*, that such rights to indemnification shall thereafter continue in full force and effect insofar as they relate to Claims or other matters of which the Indemnitor has received notice in accordance with Section 12.04 prior to the expiration of the applicable Survival Period.

SECTION 12.02. *Indemnification by the Sellers*. In accordance with and subject to the terms of this Article XII, the Seller Responsible Parties shall indemnify the Purchaser and each of its Affiliates (including the Acquired Companies after the Closing) and each of their respective directors, officers, shareholders, employees, agents and other representatives (collectively, the "Purchaser Indemnified Parties") and hold them harmless from and against any and all Claims, Legal Proceedings, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses of Remedial Actions (undertaken with reasonable cost mitigation approaches that are permitted by Environmental Health and Safety Laws, to the extent that they do not unreasonably interfere with the operation of the business of the relevant Target Company or Company Property, and that a reasonable and prudent business operator, without the availability of indemnification for costs and expenses of Remedial Action, would reasonably implement) and other costs and expenses (including reasonable fees and disbursements of counsel, court costs, third-party expert and consultant fees and costs of investigation) (collectively, "Losses") which are asserted against, imposed upon or incurred by any such Purchaser Indemnified Party as a result of, based upon or arising out of or in connection with any of the following (the "Purchaser Indemnity Claims"), whether or not they involve or arise from a Claim by a third party:

(a) the breach by any Seller of any representation or warranty on the part of such Seller contained in Article III; *provided*, that, if a breach of any such representation or warranty has occurred, all Materiality Qualifications contained in any such representation or warranty shall be disregarded for purposes of determining the amount of Losses resulting therefrom;

(b) the breach by any E Seller of any representation or warranty on the part of such E Seller contained in Article IV; *provided*, that, if a breach of any such representation or warranty has occurred, all Materiality Qualifications contained in any such representation or warranty shall be disregarded for purposes of determining the amount of Losses resulting therefrom;

(c) the breach by Cobb or Bon Accord of any representation or warranty on the part of Cobb or Bon Accord contained in Article V; *provided*, that, if a breach of any such representation or warranty has occurred, all Materiality Qualifications contained in any such representation or warranty shall be disregarded for purposes of determining the amount of Losses resulting therefrom;

(d) the breach by the Sellers or the Company of any representation or warranty on the part of the Sellers or the Company contained in Article VI; *provided*, that, if a breach of any such representation or warranty has occurred, all Materiality Qualifications contained in any such representation or warranty shall be disregarded for purposes of determining the amount of Losses resulting therefrom;

(e) the breach by any Seller of any covenant or agreement of such Seller contained in this Agreement;

(f) the breach by the Company of any covenant or agreement of the Company contained in this Agreement that is required by its terms to be performed prior to or at the Closing;

(g) the incurrence by or imposition on any Purchaser Indemnified Party of any Indemnified Tax that was not previously paid by the Seller Representative pursuant to Section 9.02(d);

(h) the incurrence by or imposition on any Purchaser Indemnified Party of any liabilities, obligations or expenses arising under or in connection with the Excluded Contract or any Claim against a Target Company by any party thereto or any Lien on any Equity Interests of the Target Companies arising thereunder;

(i) the incurrence by or imposition on any Purchaser Indemnified Party of any liabilities, obligations or expenses arising under or in connection with the Contracts identified in Schedule 12.02(i) hereto or any Claim against a Target Company by any party thereto, including (i) any Claim for the payment of any fee or commission or (ii) any Claim for indemnification or contribution or the payment or reimbursement of costs or expenses thereunder; and

(j) the incurrence by or imposition on any Purchaser Indemnified Party of any liabilities, obligations or expenses arising under the Atlas Purchase Agreement or otherwise in connection with the Atlas Transaction.

Subject to Section 12.05, the indemnification obligations of the Seller Responsible Parties pursuant to this Section 12.02 shall be allocated as follows:

(1) The indemnification obligations pursuant to paragraph (a) or (e) above shall be borne severally by each Seller Responsible Party who is responsible for a breach of representation, warranty, covenant or agreement by the applicable Seller; *provided, however*, that the E Sellers shall be jointly and severally liable for any such breach by any E Seller;

(2) The indemnification obligations pursuant to paragraph (b) above shall be borne on a joint and several basis by the E Sellers;

(3) The indemnification obligations pursuant to paragraph (c) or (j) above shall be borne on a joint and several basis by Cobb and Bon Accord;

(4) The indemnification obligations pursuant to paragraph (d), (f), (g), (h) or (i) above shall be borne by the Seller Responsible Parties in proportion to their Pro Rata Shares.

SECTION 12.03. *Indemnification by the Purchaser*. In accordance with and subject to the terms of this Article XII, the Purchaser shall indemnify each Seller and its Affiliates, directors, officers, shareholders, employees, agents and other representatives (collectively, the "Seller Indemnified Parties") and hold them harmless from and against any and all Losses which are asserted against, imposed upon or incurred by any such Seller Indemnified Party as a result of, based upon or arising out of or in connection with any of the following (the "Seller Indemnity Claims"), whether or not it gives rise to a Claim by a third party:

(a) the breach by the Purchaser of any of its representations or warranties contained in this Agreement; *provided*, that, if a breach of any such representation or warranty has occurred, all Materiality Qualifications contained in any such representation or warranty shall be disregarded for purposes of determining the amount of Losses resulting therefrom;

(b) the breach by the Purchaser of any of its covenants or agreements contained in this Agreement; and

(c) the breach by the Company of any covenant or agreement of the Company contained in this Agreement that is required by its terms to be performed after the Closing.

SECTION 12.04. *Indemnification Procedures*.

(a) Subject to Section 9.05, in the case of any Indemnity Claims asserted against or imposed upon an Indemnitee by a third party ("Third-Party Claims"), the obligations of the Indemnitor in respect of such Third-Party Claims shall be performed in accordance with the following procedures:

(i) The Indemnitee shall give the Indemnitor written notice of any such Third-Party Claim within a reasonable time after the earlier of the written assertion thereof or the service of any notice of commencement of, or other first legal process relating to, any Legal Proceeding in which such Third-Party Claim is asserted; *provided*, *however*, that, if the Indemnitee fails to notify the Indemnitor of a Third-Party Claim within a reasonable time as contemplated by this subparagraph (a)(i), the Indemnitor shall not be relieved of its obligations in respect of such Third-Party Claim, except to the extent (and only to the extent) that the Indemnitor is actually prejudiced by such failure.

(ii) Promptly after notification of a Third-Party Claim as contemplated by subparagraph (a)(i), the Indemnitor may assume the defense of such Third-Party Claim with counsel reasonably acceptable to the Indemnitee; *provided, however*, that if (A) the Indemnitor fails, within 30 days (or sooner, if the nature of the Third-Party claim so requires) after receipt of written notice of such Third-Party Claim, to assume the defense thereof in accordance with this subparagraph (a)(ii), (B) in the reasonable judgment of the Indemnitee based on the advice of its counsel, there exists a conflict of interest between the Indemnitee and the Indemnitor with respect to such Third-Party Claim or there are defenses available to the Indemnitee that are not available to the Indemnitor or (C) the Third-Party Claim seeks an injunction or other equitable relief against the Indemnitee, the Indemnitee shall (upon notifying the Indemnitor in writing of its election to do so) have the right to undertake the defense and, subject to the last sentence of this subparagraph (a)(ii), to compromise and settle such Third-Party Claim for the account and risk of the Indemnitor and at the sole cost and expense of the Indemnitor. If the defense of a Third Party Claim is assumed or conducted by either the Indemnitor or the Indemnitee as provided in this subparagraph (a)(ii), the other party shall be entitled to employ separate counsel and to participate in the defense of such Third-Party Claim, but the fees and expenses of counsel so employed shall be borne solely by such other party. The Indemnitor and Indemnitee shall cooperate with each other in the defense of any Third Party Claim and make available to the other, at the expense of the Indemnitor, all such witnesses, records, materials and information in its possession or under its control relating thereto as is reasonably required by the other party. The Indemnitor shall not settle or compromise any Third-Party Claim or consent to the entry of any judgment in respect thereof that does not include as an unconditional term thereof the grant by each claimant or plaintiff to each Indemnitee of a full and unconditional release from any and all liability in respect thereof. The Indemnitee shall not settle or compromise any Third-Party Claim in any manner, or consent to the entry of any judgment in respect thereof, without the prior written consent of the Indemnitor, which consent will not be unreasonably withheld, conditioned or delayed.

(b) In the event an Indemnitee has an Indemnity Claim against an Indemnitor that is not a Third-Party Claim (a "Direct Claim"), the Indemnitee shall deliver notice of such Direct Claim with reasonable promptness to the Indemnitor. The failure by the Indemnitee to so notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder except to the extent (and only to the extent) that the Indemnitor is actually prejudiced by such failure. If during the period of 30 days commencing upon receipt by the Indemnitee of a notice of Direct Claim, the Indemnitor delivers a written response (a "Response Notice") disputing its liability therefor, the parties shall attempt for a period of 30 days to resolve the dispute; *provided, however*, that if the dispute is not resolved in such 30-day period, then such dispute shall be resolved in a Legal Proceeding in the Delaware Courts. If the Indemnitor does not deliver a Response Notice to the Indemnitee within 30 days following its receipt of a notice of Direct Claim, such Direct Claim specified by the Indemnitee in such notice shall be conclusively deemed a liability of the Indemnitor, and the Indemnitor shall pay (or, if applicable, shall take all action to cause the Escrow Agent to pay) the amount of such liability to the Indemnitee on demand or, in the case of any notice in which the amount of the Direct Claim (or any portion thereof) is estimated, on such later date when the amount of such Direct Claim (or such portion thereof) becomes finally determined.

SECTION 12.05. *Certain Limitations*.

(a) The Purchaser Indemnified Parties shall not be entitled to indemnification for (i) any Purchaser Subject Losses, unless the aggregate of all Purchaser Subject Losses incurred or suffered by the Purchaser Indemnified Parties exceeds, on a cumulative basis, $2,250,000, and then only to the extent of such excess, or (ii) any Purchaser Subject Losses arising or resulting from any matter or series of related matters where the total amount of Purchaser Subject Losses arising or resulting therefrom is less than $25,000.

(b) The maximum amount of Purchaser Subject Losses that may be recovered by the Purchaser Indemnified Parties shall be the amount of funds remaining in the Escrow Account. The maximum aggregate amount of Losses that may be recovered by the Purchaser Indemnified Parties pursuant to the provisions of Section 12.02(e) (other than as a result of a breach of Sections 8.07 or 8.08), (f) or (g) or for breaches of the Fundamental Representations, shall be the Purchase Price.

(c) To the extent the E Sellers have any joint and several indemnification obligation pursuant to Section 12.02, the Purchaser Indemnified Parties shall provide to each E Seller (i) notice of its Pro Rata Share of such indemnification obligation and (ii) a reasonable opportunity to pay its Pro Rata Share thereof for a period of at least 30 days before pursuing the other E Seller for any Losses for which the notified E Seller is primarily responsible.

(d) Except as otherwise provided in Section 9.02(d), any obligations of the Sellers to provide indemnification pursuant to Section 12.02 shall first be satisfied from the funds remaining in the Escrow Account and second through direct payment by the Sellers (in accordance with the terms and subject to the limitations set forth herein).

(e) In calculating amounts payable to any Purchaser Indemnified Party, the amount of indemnified Losses shall be computed net of (i) payments actually received by the Purchaser Indemnified Parties under any insurance policy, and (ii) any amounts actually recovered by the Purchaser Indemnified Parties from any other third party with respect to such Losses. Each party to this Agreement shall act in good faith and use commercially reasonable efforts to mitigate any Losses for which it is entitled to indemnification hereunder; *provided*, *however*, that none of the parties shall be required to curtail, modify or make any other changes to its businesses or operations, commence any Legal Proceedings against a third party or incur any material out-of-pocket expenses in order to mitigate such Losses.

(f) Subject to Section 12.05(g), the amount of any Losses of any Purchaser Indemnified Party shall be computed net of any Tax Benefits actually realized by any Purchaser Indemnified Party or its Affiliates by reason of such Loss to the extent such Tax Benefits are realized during or prior to the taxable year in which the Purchaser Indemnified Party receives such indemnification payment in connection with such Loss. For purposes of this Section 12.05(f), it shall be assumed that no Tax Benefits are derived with respect to any deductions realized by the Company that are allocated to members other than the Blocker Companies (or any successor entity).

(g) Notwithstanding Section 12.05(f), the amount of any Losses for which indemnification is provided under Section 12.02(h) shall be computed net of any Tax Benefits actually realized by any Purchaser Indemnified Party in any year. To the extent that a Loss is initially computed without regard to a Tax Benefit and a Purchaser Indemnified Party (or any of its Affiliates) subsequently realizes a Tax Benefit with respect to such Loss, the Purchaser shall pay the Seller Representative for the benefit of the Sellers the amount of such subsequently realized Tax Benefit. Such subsequently realized Tax Benefit will be paid within ten (10) days of filing the Tax Return with respect to which such Tax Benefit was actually realized (or ten (10) days of the receipt of a refund, if the Tax Benefit is in the form of a refund). The Purchaser shall cooperate in good faith with the Seller Representative to realize any Tax Benefits as promptly as permitted under applicable Law.

SECTION 12.06. *Exclusive Remedy*. From and after the Closing, the provisions of this Article XII shall constitute the exclusive remedy on the part of any party hereto in respect of any matters arising out of or based upon the matters set forth in this Agreement; *provided*, *however*, that nothing herein shall limit the right of any party to seek specific performance or injunctive relief in connection with a breach by another party of its obligations under this Agreement that occurs after the Closing Date. Notwithstanding the previous sentence or any other provision of this Article XII, nothing contained in this Article XII shall be construed to limit any liability of any party hereto in the event of fraud on the part of such party.

SECTION 12.07. *Reliance*. The rights of the Purchaser Indemnified Parties to indemnification for the representations and warranties of the Sellers and the Company set forth in this Agreement are part of the basis of the bargain contemplated by this Agreement, and the Purchaser Indemnified Parties' rights to indemnification shall not be affected or waived by virtue of, and the Purchaser Indemnified Parties shall be deemed to have relied upon the representations and warranties of the Sellers and the Company set forth in this Agreement notwithstanding any knowledge acquired (or capable of being acquired) by any Purchaser Indemnified Party of any untruth of any such representation or warranty of any Seller or the Company set forth in this Agreement, regardless of whether such knowledge was obtained (or was capable of being obtained) through the investigation by such Purchaser Indemnified Party or through disclosure by any Seller, Acquired Company or any other Person, and regardless of whether such knowledge was obtained before, at or after the Closing.

SECTION 12.08. *Tax Treatment*. In the case of any indemnity payment under this Agreement, the parties agree to treat such payment, to the extent permitted by applicable Law, as an adjustment to the Purchase Price paid hereunder.

SECTION 12.09. *Losses*. IN NO EVENT SHALL ANY PARTY BE LIABLE FOR SPECIAL OR PUNITIVE DAMAGES; *PROVIDED*, *HOWEVER*, THAT THIS SECTION 12.09 SHALL NOT LIMIT A PARTY'S RIGHT TO RECOVERY UNDER THIS ARTICLE XII FOR ANY SUCH DAMAGES TO THE EXTENT SUCH PARTY IS REQUIRED TO PAY SUCH DAMAGES TO A THIRD PARTY IN CONNECTION WITH A MATTER FOR WHICH SUCH PARTY IS OTHERWISE ENTITLED TO INDEMNIFICATION UNDER THIS ARTICLE XII.

ARTICLE XIII
DEFINITIONS

SECTION 13.01. *Certain Definitions*. In addition to the other terms defined in this Agreement, the following terms, as used herein, shall have the respective meanings set forth below:

"Acquired Companies" means the Blocker Companies, Pierpont and the Target Companies.

"Acquisition Proposal" means any inquiry, proposal or offer from any Person (other than the Purchaser or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving the Target Companies, (ii) the issuance or acquisition of Equity Interests of the Company or (iii) the sale, lease, exchange or other disposition any significant portion of the properties or assets of the Target Companies.

"Additional Consideration" means, as of any date of determination, without duplication, the amounts the Sellers, or the Seller Representative on behalf of the Sellers, receive from Purchaser, the Escrow Agent or the Seller Representative Reserve including, but not limited to, as provided in or contemplated by Section 1.04 (Post-Closing Adjustment), Section 1.05 (Escrow), Section 8.12 (Excluded Contract Claims), Section 12.03 (Indemnification by the Purchaser) or Section 14.01 (Provisions Concerning the Seller Representative) of this Agreement after the Closing.

"Affiliate" means, with respect to a Person, another Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Unless otherwise specified in this Agreement, the Acquired Companies shall be deemed Affiliates of the Sellers for all periods prior to the Closing and Affiliates of the Purchaser for all periods beginning as of and following the Closing.

"Agreement" means this Agreement, as the same may be amended or supplemented from time to time.

"Allocation Schedule" means Schedule 13.01(a) hereto, which schedule sets forth (a) with respect to each Seller, such Seller's allocable portion of (i) the Initial Purchase Price and (ii) any Additional Consideration paid to the Seller Representative and allocated in accordance with an agreement among the Sellers, and (b) with respect to each Seller Responsible Party, the allocable portion of such Person's indemnification obligations and other payment obligations under Article XII and elsewhere in this Agreement.

"Atlas Purchase Agreement" means the Purchase Agreement, dated as of September 21, 2007, among Wonewoc Resources, LLC and the other parties listed therein.

"Atlas Transaction" means the transactions contemplated by the Atlas Purchase Agreement.

"BH Non-Blocker Tax Liability" means the amount computed by dividing (a) the product of (x) the Assumed Tax Rate Differential *multiplied by* (y) the aggregate amount of BH Deferred Revenue included in income on the Company's final Flow-Through Return for the year ended on the Closing Date that is allocable to the Non-Blocker Members *by* (b) 78.50% (*i.e.*, 100% - 21.50%). For this purpose the "Assumed Tax Rate Differential" means an amount equal to 44.28% minus 20%.

"BH Deferred Revenue" means any "deferred revenue" of the Company with respect to the payments received pursuant to the Plant Construction Reimbursement and Sales Agreement, dated October 25, 2011, by and between Great Northern Sand LLC and Baker Hughes Oilfield Operations, Inc., as amended, as of 11:59 p.m., Dallas, Texas time, on the Closing Date.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks in the State of Texas are authorized or obligated by Law or executive order to close.

"Capacity Expansion Project" means the capacity expansion project described in Section 8.02(a)(v) of the Company Disclosure Schedule.

"Cash" means all cash and cash equivalents (including short-term liquid investments with original maturities of 90 days or less), as calculated in accordance with the Accounting Principles and Illustrations.

"Claim" means any demand, claim, cause of action or chose in action, right of recovery or right of set-off of any kind of character.

"Class P Common Unit Holders" means the holders of Class P Common Units pursuant to the Company LLC Agreement.

"Cobb" means Steve Cobb.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company Disclosure Schedule" means that disclosure schedule delivered by the Sellers and the Company to the Purchaser as contemplated by Article VI, which schedule shall, in the case of each matter disclosed therein, make specific reference to the section and subsection of this Agreement to which such matter relates; *provided*, *however*, that the information set forth in one section or subsection thereof shall be deemed to apply to each other section or subsection of such schedule if, and only if, its relevance to such other section or subsection is reasonably apparent on the face of such disclosure.

"Company LLC Agreement" means that certain Amended and Restated Limited Liability Company Agreement of CRS Holdco LLC, dated as of June 6, 2012.

"Confidentiality Agreement" means that certain Non-Disclosure Agreement, dated as of March 5, 2014, by and between the Purchaser and Proppants.

"Consents" means consents, waivers, licenses, permits, clearances, approvals and other authorizations.

"Contract" means any contract, agreement, understanding, lease, sublease, license, sublicense, distribution agreement, promissory note, evidence of Indebtedness, indenture, instrument, mortgage, insurance policy, annuity or other binding commitment, whether written or oral.

"Copyrights" means United States and foreign copyrights and maskwork rights, whether registered or unregistered, and pending applications to register the same.

"Electronic Transmission" means any form of electronic communication (such as by email of documents in Adobe Portable Document Format (.pdf) or facsimile transmission) that is generally accepted as a means of communication and that (i) creates a record that may be retained, retrieved, and reviewed by the recipient and (ii) may be directly reproduced in paper form by the recipient through an automated process.

"Entity" means any Person other than an individual.

"Environmental Health and Safety Laws" means all Laws and Orders relating to pollution, to protection of human health and safety from Material of Environmental Concern, or to the environment (including, but not limited to, ambient air, surface water, groundwater, land surface or subsurface strata), including those relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Material of Environmental Concern.

"Environmental Health and Safety Liability" means any liability, obligation or commitment, whether accrued, contingent, absolute or otherwise, including Losses, (i) resulting from or attributable to the actual or threatened Releases of Material of Environmental Concern in violation of or giving rise to liability under Environmental Health and Safety Laws or resulting from or attributable to exposure to Material of Environmental Concern, (ii) arising from non-compliance with or obligations set forth in Environmental Health and Safety Laws or arising under any Contract and resulting from or attributable to the generation, manufacture, processing, distribution, use, treatment, storage, Release or threatened Release, transport, or handling of Material of Environmental Concern, or (iii) resulting from worker exposures or unsafe work practices, or other failure to comply with state or federal occupational and/or mining safety laws or regulations, but shall not mean or include any budgeted or other internal costs and expenses to comply with or adhere to Environmental Health and Safety Laws or Contracts in the ordinary and usual course of day-to-day operations of the business of the Company.

"Equity Interests" means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation, however designated, (ii) with respect to any partnership, all partnership interests or units, participations or equivalents of partnership interests of such partnership, however designated, or (iii) with respect to any limited liability company, all limited liability company or membership interests or units, participations or equivalents of limited liability company or membership interests of such limited liability company, however designated.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any Person that, together with the Target Companies, would be deemed a "single employer" within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"Escrow Agent" means JPMorgan Chase Bank N.A.

"Escrow Amount" means $15,000,000.

"EXP" means Eagle Materials Inc., a Delaware corporation.

"Excluded Contract" means the contract identified on Schedule 13.01(b) hereto.

"Expiration Date" means December 31, 2014; *provided, however*, that if the applicable waiting period under the HSR Act has not terminated or expired prior to such date because the DOJ or FTC has made a request for additional information or documentary material relevant to this transaction after the initial filing, the Expiration Date shall be automatically extended until February 28, 2015.

"Facility" means the frac sand processing facility and related quarries and other properties owned, leased or operated by the Target Companies which are located in Dovre Township, Wisconsin, and more specifically identified and described on Schedule 13.01(c) hereto.

"Final Retention Award Amount" means, as of the date of completion of the Capacity Expansion Project, the total amount of cash actually paid to the individuals set forth on Schedule 8.17 hereto pursuant to the Retention Plan.

"Fundamental Representations" means the representations and warranties made by a party hereto set forth in Sections 3.01, 3.02, 3.05, 3.07, 3.08, 3.09, 6.01, 6.02, 6.05, 6.06, 6.15, 6.31, Articles IV and V and Sections 7.01, 7.02, 7.05 and 7.08.

"GAAP" means generally accepted accounting principles in the United States as in effect at the time of the application thereof in accordance with the terms of this Agreement.

"Governmental Authority" means any government or governmental or quasi-governmental or regulatory body thereof, or political subdivision thereof, whether federal, state, local or foreign, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Green Field Deferred Revenue" means any "deferred revenue" of the Company with respect to the payments received pursuant to the Plant Construction Reimbursement and Sales Agreement, dated October 28, 2011, by and between Great Northern Sand LLC and Green Field Energy Services, Inc., as amended, as of 11:59 p.m., Dallas, Texas time, on the Closing Date.

"Guarantee" of or by any Person means any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness of any other Person in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness or (iii) to maintain working capital, equity capital or other financial statement condition or liquidity of such other Person so as to enable such other Person to pay such Indebtedness; *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit, in each case in the ordinary course of business.

"HSR Act" means Section 7A of the Clayton Act (Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976), as amended (including any successor statute).

"Horn" means Stephen R. Horn.

"Indebtedness" of any Person means (i) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind (except for prepaid revenue received pursuant to any Contract with any customer relating to the provision of goods or services by such Person), (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, other than trade credit incurred in the ordinary course of business consistent with past practice, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (vi) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (vii) all Guarantees by such Person, (viii) all capital lease obligations of such Person, (ix) all obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (x) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances.

"Indemnification Agreements" means the Indemnification Agreements entered into by and between the Company, on the one hand, and each of Brian Young, Mark First, Cobb, Horn and Henry Kleemeier, on the other hand, in each case, as of June 6, 2012.

"Indemnified Tax" means, without duplication, any liability in respect of any Taxes (i) of the Sellers (including any Taxes for which the Sellers are responsible pursuant to Section 9.01), (ii) imposed on any Acquired Company, or for which any Acquired Company becomes liable, for any Pre-Closing Tax Period (in the case of a Straddle Period, as determined pursuant to Section 9.04), (iii) imposed on any of the Acquired Companies, or for which any of the Acquired Companies (or their equity owners) becomes liable, in respect of any Greenfield Deferred Revenue, (iv) imposed on any Acquired Company (or any predecessor thereof) by reason of having been a member of an affiliated, combined, consolidated or unitary group with another Person on or prior to the Closing Date by reason of Treasury Regulations Section 1.1502-6(a) (or any analogous or similar provision of Law), (v) of or imposed on any Person for which any Acquired Company is or has been liable as a transferee or successor for any Pre-Closing Tax Period as a result of transactions engaged in by an Acquired Company prior to the Closing Date, by Contract or assumption entered prior to the Closing Date, operation of Law or otherwise or (vi) any Tax resulting from a breach of a representation or warranty in Section 4.07(f), (g), (h), or (i), Section 5.07(g), (h), (i) or (j), or Section 6.15(f), (g), (h), or (i). Notwithstanding anything to the contrary in this Agreement, Indemnified Taxes shall exclude any Tax specifically included as a liability in the calculations of Final Working Capital Amount or the Tax Liability Amount or that are related to or otherwise associated with the BH Deferred Revenue or that result from a transaction engaged in by the Acquired Companies on the Closing Date, but after the Closing, that is outside of the ordinary course of business and not contemplated hereby. Indemnified Taxes shall be computed assuming that the amount of BH Deferred Revenue included in income of the Acquired Companies (to the extent reflected on the Company's Flow-Through Tax Return) for the year ended on the Closing Date (or portion of any Straddle Period ending on the Closing Date) shall be zero dollars.

"Indemnitee" means any Person entitled to indemnification in respect of any Indemnity Claim pursuant to the terms of this Agreement.

"Indemnitor" means any Person from whom an Indemnitee is entitled to seek indemnification in respect of any Indemnity Claim pursuant to the terms of this Agreement.

"Indemnity Claims" shall mean any Purchaser Indemnity Claims or Seller Indemnity Claims.

"Information Systems" means all (i) computer hardware, databases and data storage systems, and (ii) computer, data, database and communications networks (other than the Internet), whether for data, voice or video access, transmission or reception.

"Intellectual Property" means all intellectual property or proprietary rights throughout the world, including all such rights embodied in software, source and object code, Internet domain names and all Copyrights, Patents, Trademarks and Trade Secrets.

"Inventory" means all inventory produced, manufactured, acquired or ordered by the Target Companies and held for sale in connection with their respective businesses, including inventory consisting of finished goods, raw materials, work-in-process, supplies and packaging materials.

"IRS" means the United States Internal Revenue Service.

"Knowledge" means, with respect to any party to this Agreement. (a) in the case of the Company, the actual knowledge of Horn, Cobb, Brody Johnson, Robbie Sage, Erik Van Arsdale, Alex Springer and Denny Luke, (b) in the case of the E Sellers, the actual knowledge of Brian Young and Mark First, (c) in the case of Bon Accord and the Purchaser, the actual knowledge of the officers and other management-level employees of such party and (d) in the case of any other party to this Agreement that is not an Entity, the actual knowledge of such party, in each case, together with such other facts that any individual listed or described in clause (a) or (c) would reasonably be expected to discover or otherwise become aware of in the performance of his duties, roles and responsibilities in connection with the businesses of the Target Companies or other applicable Entity and the transactions contemplated by this Agreement.

"Law" means any federal, state, provincial or local law, statute, rule, ordinance, code or regulation (including the common law).

"Legal Proceeding" means any judicial, administrative or arbitral action, suit or proceeding (whether public or private and whether civil, criminal or administrative) or any investigation by or before any court or other Governmental Authority, whether civil, criminal or investigative.

"Lien" means (i) any mortgage, pledge, hypothecation, assignment, security interest, option, lien or any preference, priority or other right or interest granted pursuant to a security agreement or preferential arrangement of any kind or character whatsoever (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable Law of any jurisdiction), and (ii) any other lien, charge, levy, easement, encumbrance or restriction of any kind, or otherwise.

"Material Adverse Effect" means (a) any event, change, development or occurrence that, individually or together with any other event, change, development or occurrence, has had or would reasonably be expected to have a material and adverse effect on the business, operations, affairs, condition (financial or otherwise), results of operation, properties, assets or liabilities of the Target Companies, taken as a whole, or (b) an event or circumstance that could reasonably be expected to prevent, or materially impede the consummation of the transactions contemplated by this Agreement, but, in the case of clause (a) above, excluding any such effect attributable to or resulting from (i) any change in applicable Law, (ii) any change in United States or foreign generally accepted accounting principles, or (iii) general economic, regulatory, political or market conditions in the United States or changes, military action or any act of terrorism that do not affect the business and operations of the Target Companies in a disproportionate manner relative to other Persons engaged in the frac sand industry, (iv) the taking of any action required to be taken under the terms of this Agreement or taken with the express written consent of the Purchaser, (v) changes to the industry or markets in which the business of any Target Company operates that do not affect the business and operations of the Target Companies in a disproportionate manner relative to other Persons engaged in the frac sand industry, and (vi) the announcement or disclosure of this Agreement and the transactions contemplated hereby.

"Materiality Qualifications" means, with respect to the representations and warranties of any party, all qualifications or exceptions contained therein based on materiality (including any qualifications related to the presence or absence of a Material Adverse Effect) and all usages of the terms "material," "in all material respects," "in any material respect" or similar qualifiers.

"Material of Environmental Concern" means (i) any substance, material or waste in a form or condition defined, characterized or regulated as hazardous, extremely hazardous, toxic, radioactive or dangerous or words of similar import under any Environmental Health and Safety Law, (ii) any substance, material or waste in a form or condition classified as a contaminant or pollutant under any Environmental Health and Safety Law or (iii) any other substance (including, but not limited to, petroleum and its byproducts, asbestos and asbestos containing materials, hazardous or toxic fungus, mold or mycotoxins, or lead or lead containing paint), material or waste in a form or condition, the manufacture, processing, distribution, use, treatment, storage, placement, disposal, removal or transportation of which is subject to regulation under any Environmental Health and Safety Law.

"Momentive Purchase Agreement" means the Asset Purchase Agreement, dated as of January 9, 2014, among Momentive Specialty Chemicals Inc., Proppants and the other parties identified therein.

"Net Working Capital" means the excess of (i) the current assets (excluding Cash) of the Acquired Companies over (ii) the current liabilities of the Acquired Companies (excluding current maturities of and interest on Indebtedness and accounts payable associated with the Capacity Expansion Project or the Retention Award Amount), in each case as calculated as of the Effective Time and in accordance with the Accounting Principles and Illustration (except to the extent modified by clauses (i) or (ii) above); *provided, however*, that income Tax assets and income Tax liabilities will not be considered current assets or current liabilities for purposes of this definition.

"Non-Blocker Members" means all members of the Company other than the Blocker Companies immediately prior to the transactions contemplated by this Agreement.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Authority.

"Ordinary Course of Business" means the ordinary and usual course of day-to-day operations of the business of the Company through the date hereof consistent with past practice.

"Organizational Documents" means (i) in the case of any Person organized as a corporation, the certificate or articles of incorporation of such corporation (or, if applicable, the memorandum and articles of association of such corporation) and the bylaws of such corporation, (ii) in the case of any Person organized as a limited liability company, the certificate of formation or organization and the limited liability company agreement, operating agreement or regulations of such limited liability company, (iii) in the case of any Person organized as a limited partnership, the certificate of limited partnership and partnership agreement of such limited partnership and (iv) in the case of any other Person, all constitutive or organizational documents of such Person which address matters relating to the business and affairs of such Person similar to the matters addressed by the documents referred to in clauses (i) through (iii) above with respect to Persons organized as corporations, limited liability companies or limited partnerships.

"Patents" means issued United States and foreign patents and pending patent applications, including, without limitation, provisional patent applications, continuations, continuations-in-part, divisions, reissues, reexaminations and extensions.

"Permit" means any license, permit, franchise, certificate of authority or order, or any waiver of the foregoing, required to be issued by any Governmental Authority.

"Permitted Liens" means the following types of Liens: (i) statutory Liens of carriers, warehousemen, mechanics, repairmen, workmen and materialmen and other like statutory Liens, in each case arising under applicable Law in the Ordinary Course of Business (x) for amounts not yet overdue or (y) for amounts that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts; (ii) easements, rights of way, licenses, reservations, restrictions, encroachments, and other minor defects or irregularities in title, which do not, individually or in the aggregate, impair in any material respect the business and operations of the Target Companies as presently conducted or result in the incurrence of any material liability, cost or expense by the Target Companies; (iii) Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established therefor in accordance with GAAP; (iv) rights of landlords and other counterparties provided for under Real Property Agreements provided to the Purchaser prior to the date hereof; (v) security given in the ordinary course of the business to any public utility, municipality or government or to any statutory or public authority in connection with the operation of the business of the Target Companies; and (vi) other Liens set forth in Schedule 13.01(d) hereto.

"Person" means an individual, a partnership, a joint venture, a corporation, a limited liability company, an unlimited liability company, a trust, an unincorporated organization, a joint venture, a Governmental Authority or any other entity.

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date.

"Post-Expansion Business" means the businesses of the Target Companies as proposed to be conducted (in accordance with the current plans of the Target Companies) after giving effect to the completion of the Capacity Expansion Project.

"Pre-Closing Capacity Expansion Project Amount" means the dollar value of all amounts expended by the Target Companies prior to the Closing in respect of the Capacity Expansion Project (but not any accounts payable of the Target Companies arising therefrom), as evidenced by reasonable supporting documentation delivered to the Purchaser.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date.

"Pro Rata Share" means, (a) in the case of a Seller, such Seller's pro rata portion as set forth in the Allocation Schedule and (b) in the case of a Seller Responsible Party, such Seller Responsible Party's pro rata portion of certain indemnification or other payment obligations provided for under this Agreement, as set forth in the Allocation Schedule; *provided, however*, that, in the case of each E Seller, such term whenever used in this Agreement shall be construed to provide that each E Seller shall be jointly and severally liable for the aggregate Pro Rata Share of all E Sellers.

"Proppants" means CRS Proppants LLC, a Delaware limited liability company.

"Purchaser Subject Losses" means any Losses of the type described in Section 12.02(a) or (d), other than any Losses arising from a breach by the Sellers or the Company of any Fundamental Representation or fraud on the part of the Sellers or the Company.

"Receivables" means any notes, accounts receivable or other indebtedness arising from the sale of merchandise or other products or the performance of services, including the right to payment of any interest or finance charges or similar fees or charges relating thereto.

"Redeemed Blocker Shares" means any Blocker Shares to be redeemed from the E Sellers prior to the Closing Date by the Blocker Companies as permitted pursuant to Section 8.02(b).

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, pouring, dumping, migration, leaching or other release into the indoor or outdoor environment, or into or out of any property.

"Remedial Action" means all actions to (i) clean up, remove, treat or in any other way address any Material of Environmental Concern present in amounts, concentrations, or in conditions that do not comply with or require remedial or response action under Environmental Health and Safety Laws; (ii) prevent the unauthorized Release of any Material of Environmental Concern so it does not endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations required by any Governmental Authority or by Environmental Health and Safety Laws or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Health and Safety Laws.

"Retention Award Amount" means the total amount of cash set forth on Schedule 8.17 hereto that the individuals identified on such Schedule would be entitled to receive upon full satisfaction of the conditions set forth in the Retention Plan.

"Retention Plan" means the plan provided for in the instruments identified on Schedule 13.01(e).

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

"Seller Disclosure Schedule" means that disclosure schedule delivered by the Sellers to the Purchaser as contemplated by Articles III, IV and V, which schedule shall, in the case of each matter disclosed therein, make specific reference to the section and subsection of this Agreement to which such matter relates; *provided*, *however*, that the information set forth in one section or subsection thereof shall be deemed to apply to each other section or subsection of such schedule if, and only if, its relevance to such other section or subsection is reasonably apparent on the face of such disclosure.

"Seller Responsible Party" means the Seller who is responsible for the indemnification or other payment obligations attributable to certain direct or indirect equity interests in the Company in accordance with this Agreement. As shown on the Allocation Schedule, after giving effect to the redemption of the outstanding Class P Common Units (other than those owned by Horn and Cobb) prior to the Closing, (i) the E Sellers are responsible on a joint and several basis for the aggregate percentage interests in the Company held by the Blocker Companies, (ii) Cobb and Horn are responsible for the percentage interest in the Company held by Original CRS, (iii) Cobb and Bon Accord are jointly and severally responsible for the percentage interest in the Company held by Pierpont, (iv) Horn is responsible for his own percentage interest in the Company and (v) Cobb is responsible for his own percentage interest in the Company.

"Straddle Period" means any taxable period that includes, but does not end on, the Closing Date.

"Subsidiary" of any Person means any other Person (a) more than 50% of whose outstanding shares of capital stock or other Equity Interests representing the right to vote for the election of directors or other managing authority of such other Person are, now or hereafter, owned or controlled, directly or indirectly, by such first Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists, (b) which does not have outstanding shares of capital stock or other Equity Interests with such right to vote, as may be the case in a partnership, joint venture or unincorporated association, but more than 50% of whose ownership interest representing the right to make the decisions for such other Person is, now or hereafter, owned or controlled, directly or indirectly, by such first Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists and (c) without limiting the generality of clause (a) or (b) above, that would be a consolidated subsidiary of such Person for purposes of financial statements prepared in accordance with GAAP.

"Target Companies" means the Company and its Subsidiaries.

"Target Working Capital Amount" means $18,044,608.

"Tax" means any (i) United States federal, state, local, or foreign taxes, assessments, duties, fees, levies or other governmental charges of any kind whatsoever including income, franchise, profits, gross receipts, license, escheat and unclaimed property obligations, ad valorem, net worth, value added, sales, use, real or personal property, payroll, withholding, employment, social security (or similar), excise, environmental, customs duties, stamp, registration, alternative and add-on minimum tax payable to any Taxing Authority (whether disputed or not), (ii) all interest, penalties, additional taxes and additions to tax imposed with respect thereto, and (iii) any liability in respect of any items described in clause (i) or (ii) payable by reason of contract, assumption, transferee or successor liability, operation of Law, Treasury Regulation Section 1.1502-6(a) or any analogous or similar provision of Law (or any predecessor or successor thereof) or otherwise.

"Tax Benefit" means any reduction in Taxes payable to a Taxing Authority (or increase in refunds receivable from a Taxing Authority).

"Tax Liability Amount" means an amount equal to the sum of any amounts that would be properly accrued as current liabilities for income Taxes on the consolidated balance sheets of the Acquired Companies (taking into account any estimated tax payments for income Taxes made on or prior to the Closing Date and including, for the avoidance of doubt, any income Taxes attributable to that portion of 2014 that falls within the Pre-Closing Tax Period (determined in accordance with Section 9.04). The Tax Liability Amount shall exclude any Taxes resulting from any transaction engaged in by any Acquired Company on the Closing Date, but after the Closing, that is outside the ordinary course of business and not contemplated hereby and shall be computed assuming the BH Deferred Revenue included in income for the year ending on the Closing Date is zero dollars.

"Tax Returns" means returns, reports, forms and information statements filed or required to be filed with a Taxing Authority relating to any Taxes, including any schedules or attachments thereto and including any amendment thereof.

"Taxing Authority" means any United States, federal, state, local or any foreign or other governmental agency responsible for the imposition, assessment or collection of any Tax.

"Trade Secrets" means trade secret rights and other similar rights in confidential ideas, know-how, concepts, methods, processes, formulae, reports, data, customer lists, mailing lists, business plans, and other proprietary information, all of which derive value, monetary or otherwise, from being maintained in confidence and not known to the Company's competitors.

"Trademarks" means United States, state and foreign trademarks and service marks, logos, designs, slogans, product and service names, product descriptions, trade dress, trade names, corporate names, and other trade designations, whether the foregoing are registered or unregistered, and all United States, state and foreign registrations and applications to register the foregoing.

"Transfer Taxes" means any real property transfer, sales, use, value added, stamp, documentary, recording, registration, conveyance, stock transfer, intangible property transfer, personal property transfer, gross receipts, registration, duty, securities transactions or similar fees or Taxes or governmental charges (together with any interest or penalty, addition to Tax or additional amount imposed) as levied by any Taxing Authority or other Governmental Authority in connection with the transactions contemplated by this Agreement, including any payments made in lieu of any such Taxes or governmental charges that become payable in connection with the transactions contemplated by this Agreement.

"Treasury Regulations" means the regulations promulgated under the Code, as such regulations may be amended from time to time.

SECTION 13.02. *Terms Defined in Other Provisions*. The following is a list of additional terms defined in other provisions of this Agreement and a reference to the specific provision in which such term is defined:

Term	**Section**
Accounting Principles and Illustration	Section 1.03
Adjustment Amount	Section 1.04(f)
Arbiter Objection Statement	Section 1.04(d)
Assignment and Assumption Agreement	Section 2.03(a)
Assumed Tax Rate Differential	Section 13.01
Audited Financial Statements	Section 6.07
Base Purchase Price	Section 1.02(a)
Benefit Plan	Section 6.16(a)
Blocker Companies	Recitals
Blocker Shares	Recitals
Bon Accord	Preamble
Business Confidential Information	Section 8.07(a)
Charge	Section 14.01(f)
Closing	Section 2.01
Closing BH Tax Liability	Section 1.04(a)
Closing Cash	Section 1.04(a)
Closing Date	Section 2.01
Closing Indebtedness	Section 1.03
Closing Statement	Section 1.04(a)
Closing Tax Liability Amount	Section 1.04(a)
COBRA	Section 6.16(i)
Company	Preamble
Company Documents	Section 6.02(a)
Company Employee	Section 6.16(o)
Company Intellectual Property	Section 6.14(f)
Company Licensed Intellectual Property	Section 6.14(e)
Company Owned Intellectual Property	Section 6.14(a)
Company Property	Section 6.10(a)
Company Released Matters	Section 8.16(a)
Company Released Party	Section 8.11
Competing Business	Section 8.08(b)
Consulting Agreement	Recitals
Continuing Employee	Section 8.04(a)
Delaware Courts	Section 14.12(a)
Direct Claim	Section 12.04(b)
Direct Equity Interests	Recitals
Disputed Amount	Section 1.04(b)

Term	Section
DOJ	Section 3.04
E C Unit Blocker	Recitals
E Capital Partners	Preamble
E Partners	Preamble
E Preferred Blocker	Recitals
E Sellers	Preamble
Effective Time	Section 1.03
EIV C Unit Blocker	Recitals
EIV Preferred Blocker	Recitals
Enforceability Exceptions	Section 3.02(b)
Environmental Permits	Section 6.18(a)
Escrow Account	Section 1.05
Escrow Agreement	Section 1.05
Estimated BH Tax Liability	Section 1.03
Estimated Closing Balance Sheets	Section 1.03
Estimated Closing Cash	Section 7.14(a)
Estimated Closing Statement	Section 1.03
Estimated Tax Liability Amount	Section 1.03
Estimated Working Capital Amount	Section 1.03
Final Arbiter	Section 1.04(d)
Final Working Capital Amount	Section 1.04(a)
Financial Statements	Section 6.07
Flow-Through Returns	Section 9.02(a)
FTC	Section 3.04
Improvements	Section 6.10(g)
Initial Purchase Price	Section 1.02
Latest Balance Sheet	Section 6.07
Latest Financial Statements	Section 6.07
Leasehold Property	Section 6.10(a)
Locke	Section 14.15
Losses	Section 12.02
Material Consents	Section 10.02(d)
Material Contract	Section 6.12(a)
Negotiation Period	Section 1.04(c)
Objection Date	Section 1.04(b)
Objection Notice	Section 1.04(b)
Option Property	Section 6.10(a)
Original CRS	Preamble
Other Sellers	Preamble
Outstanding Company Units	Section 6.05
Owned Property	Section 6.10(a)
Payoff Letters	Section 1.03
Pierpont	Recitals
Pierpont Interests	Recitals
Pre-Closing Communications	Section 14.15
Pre-closing Period	Section 8.01(a)
Purchase Price	Section 1.04
Purchase Price Allocation	Section 9.09
Purchaser	Preamble
Purchaser Documents	Section 7.02
Purchaser Indemnified Parties	Section 12.02
Purchaser Indemnity Claims	Section 12.02
Purchaser Plan	Section 8.04(a)
Qualified Plan	Section 6.16(f)
Real Property Agreements	Section 6.10(f)
Receivables Settlement Period	Section 8.15

Term	Section
Redemption Agreement	Preamble
Registered Intellectual Property	Section 6.14(a)
Repurchased Receivables	Section 8.15
Response Notice	Section 12.04(b)
Restricted Territories	Section 8.08(b)
Restrictive Covenants	Section 8.08(d)
Securities	Recitals
Seller Documents	Section 3.02(a)
Seller Indemnified Parties	Section 12.03
Seller Indemnity Claims	Section 12.03
Seller Released Matters	Section 8.11
Seller Released Party	Section 8.16(a)
Seller Representative	Preamble
Seller Representative Reserve	Section 14.01(f)
Sellers	Preamble
Subject Receivables	Section 8.15
Survival Period	Section 12.01(c)
Tax Proceeding	Section 9.06
Third-Party Claims	Section 12.04(a)
Unregistered Intellectual Property	Section 6.14(a)
Waived Subject Matter	Section 14.15
WARN Act	Section 6.17(b)
Winston	Section 14.15

ARTICLE XIV
MISCELLANEOUS

SECTION 14.01. *Provisions Concerning the Seller Representative*.

(a) *Appointment*. Each Seller hereby irrevocably appoints the Seller Representative to serve (and the Purchaser hereby acknowledges that the Seller Representative will serve) as the exclusive agent, proxy and attorney-in-fact for such Seller for all purposes under this Agreement (including full power and authority to act on behalf of such Seller).

(b) *Duties*. Without limiting the generality of the appointment in paragraph (a) above, the Seller Representative is authorized and empowered to:

(i) in connection with the Closing, execute and receive all documents, instruments, certificates, statements and agreements on behalf of and in the name of each Seller necessary or desirable to effectuate the Closing and consummate the transactions contemplated by this Agreement;

(ii) take such action as it may deem appropriate in connection with any disputes with any Purchaser Indemnified Party pursuant to this Agreement or any of the transactions contemplated hereby;

(iii) take such action as it may deem appropriate in connection with the defense, pursuit or settlement of any determinations relating to post-Closing adjustments to the Purchase Price in accordance with Section 1.04 and consent to the disbursement by the Escrow Agent of payments from the Escrow Account in connection therewith;

(iv) engage and employ, on behalf of the Sellers, agents and representatives (including legal counsel and other professionals) and incur such expenses as the Seller Representative may in its sole discretion determine necessary or appropriate in connection with the administration of the foregoing, at the expense of the Sellers;

(v) pay or cause to be paid all expenses incurred or to be incurred by or on behalf of the Sellers in connection with this Agreement or the transactions contemplated herein, or establish such reserves as the Seller Representative may from time to time determine, in its sole discretion, to be necessary or desirable in connection with the expenses and other costs to be borne by the Sellers hereunder, and direct the Purchaser, or the Escrow Agent, as the case may be, to make payment of such amounts to be applied to such reserves in lieu of any payment to or for the account of the Sellers hereunder;

(vi) accept, deliver and receive instructions and notices required or permitted under this Agreement;

(vii) pay or cause to be paid all amounts due pursuant to the Redemption Agreements;

(viii) take all other actions to be taken by or on behalf of any Seller and exercise any and all rights that any Seller is permitted or required to do or exercise under this Agreement; and

(ix) take all other actions that are either necessary or appropriate in its judgment for the accomplishment of the foregoing or contemplated by the terms of this Agreement.

The Seller Representative, in its capacity as the representative of the Sellers, will have no duties or responsibilities except for those expressly set forth in this Agreement and any other Contract to which it is a party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities on behalf of any Seller will exist with respect to the Seller Representative in its capacity as such.

(c) *Actions Binding*. The agencies and proxies created hereunder are coupled with an interest and are therefore irrevocable without the consent of the Seller Representative, and will survive the death, incapacity, bankruptcy, dissolution or liquidation of any Seller. All decisions and acts by the Seller Representative will be binding upon the Sellers and no Seller will have the right to object, dissent, protest or otherwise contest the same. Without limiting the generality of the foregoing, any notice delivered or payment made by the Purchaser or the Escrow Agent to the Seller Representative will be treated as having been delivered or made, as the case may be, to each Seller entitled thereto, regardless of the actions taken or not taken by the Seller Representative following receipt of such notice or payment.

(d) *Reliance*. The Seller Representative is authorized to act on behalf of the Sellers in accordance with the terms of this Section 14.01, notwithstanding any dispute or disagreement with or among the Sellers. The Purchaser and any other third party, including the Escrow Agent pursuant to the terms of the Escrow Agreement, will be entitled to rely on any and all actions taken by the Seller Representative without any liability to, or obligation to inquire of, any of the Sellers. The Purchaser and any such other third party is and will be fully protected in acting or refraining from acting upon and relying upon any notice, instruction, direction, request, waiver, consent, receipt or other paper or document in writing that the Purchaser or such other third party in good faith reasonably believes after due inquiry has been signed by the Seller Representative.

(e) *Liability of Seller Representative; Indemnification*.

(i) The Seller Representative will not be liable to any Seller relating to the performance of the Seller Representative's duties and obligations under this Agreement or the Escrow Agreement for any errors in judgment, negligence, oversight, breach of duty or otherwise, except to the extent it is finally determined by a court of competent jurisdiction by clear and convincing evidence that the actions taken or not taken by the Seller Representative constituted willful misconduct. The Seller Representative will be indemnified and held harmless by the Seller Responsible Parties (on behalf of the Sellers), in accordance with their Pro Rata Shares, from and against any and all losses, expenses and all other damages paid or otherwise incurred in any action, suit, proceeding or claim to which the Seller Representative is made a party by reason of the fact that the Seller Representative was acting as such pursuant to this Agreement; *provided*, *however*, that the Seller Representative will not be entitled to indemnification hereunder to the extent it is finally determined by a court of competent jurisdiction by clear and convincing evidence that the actions taken or not taken by the Seller Representative constituted willful misconduct. The Seller Representative will be fully protected in acting upon any notice, statement or certificate believed by the Seller Representative to be genuine and to have been furnished by the appropriate Person and in acting or refusing to act on any matter unless such belief constitutes willful misconduct.

(ii) The Seller Representative is serving in that capacity solely for purposes of administrative convenience, and is not liable in such capacity or any other capacity for any of the obligations of the Acquired Companies or the Sellers hereunder.

(f) *Certain Charges*. The Seller Representative shall have the right to establish a reserve from the Purchase Price with respect to the Sellers based upon their Pro Rata Share, to fund potential Charges (as defined below) of the Seller Representative that are reasonably necessary in the opinion of the Seller Representative in order to carry out its authorized duties hereunder (the "Seller Representative Reserve"). The Seller Representative will have the right to recover, at its sole discretion, from the Seller Representative Reserve and from any Additional Consideration, prior to the distribution thereof to the Sellers: (i) the Seller Representative's reasonable out-of-pocket expenses (including fees and charges of counsel, accountants or other agents) incurred in serving in that capacity and (ii) any amounts to which it is entitled pursuant to the indemnification provision in paragraph (e)(i) above (each item in clauses (i) and (ii) of this paragraph (f) being referred to as a "Charge"). In the event the amount of the Seller Representative Reserve and the Additional Consideration is insufficient to satisfy all Charges, then the Seller Responsible Parties (on behalf of the Sellers) shall, in accordance with their Pro Rata Shares, pay the Charges in excess of the Seller Representative Reserve and/or the Additional Consideration, as applicable.

(g) *Successor Seller Representative*. The Sellers may, upon ten Business Days prior written notice to the Purchaser and the Escrow Agent, appoint a successor Seller Representative hereunder; *provided*, *however*, that the appointment of such a successor will not deprive the Seller Representative so succeeded of any of the benefits of this Article XIV.

SECTION 14.02. *Amendments*. This Agreement may not be amended or modified except by a written instrument executed by each of the parties hereto (or, in the case of the Sellers, by the Seller Representative on their behalf).

SECTION 14.03. *Waivers*. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to the benefits of such term, but such waiver shall be effective only if it is in a writing signed by the party entitled to the benefits of such term and against which such waiver is to be asserted. Unless otherwise expressly provided in this Agreement, no delay or omission on the part of any party in exercising any right or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right or privilege under this Agreement operate as a waiver of any other right or privilege under this Agreement nor shall any single or partial exercise of any right or privilege preclude any other or further exercise thereof or the exercise of any other right or privilege under this Agreement.

SECTION 14.04. *Notices*. Any notices or other communications required or permitted hereunder shall be in writing and shall be sufficiently given if delivered personally or sent by facsimile transmission or recognized international overnight courier to the parties at the following addresses (or at such other address for any party as shall be specified by like notice); *provided*, that notices of a change of address shall be effective only upon receipt thereof. Notices sent by facsimile transmission shall be effective when receipt is acknowledged, and notices sent by courier guaranteeing next day delivery shall be effective on the next Business Day following delivery to the courier.

(a) If to the Purchaser or, after the Closing, the Company:

Northern White Sand LLC
3811 Turtle Creek
Suite 1100
Dallas, Texas 75219-4487
Attention: President
Telephone: (214) 432-2000
Facsimile: (214) 432-2110

with a copy to:

Eagle Materials Inc.
3811 Turtle Creek
Suite 1100
Dallas, Texas 75219-4487
Attention: James H. Graass, Executive Vice President,
General Counsel and Secretary
Telephone: (214) 432-2022
Facsimile: (214) 432-2110

and

Baker Botts L.L.P.
2001 Ross Avenue
Suite 700
Dallas, Texas 75201
Attention: Geoffrey L. Newton
Telephone: (214) 953-6753
Facsimile: (214) 661-4753

(b) If to any Seller, the Seller Representative or, prior to the Closing, the Company:

CRS Seller Representative, LLC
2411 River Oaks Boulevard
Houston, Texas 77019
Attention: Stephen R. Horn
Telephone: 713-426-6034
Facsimile: 713-426-0644

and

CRS Seller Representative, LLC
320 Park Avenue, 9th Floor
New York, New York 10022
Attention: Mark First
Telephone: (212) 832-5807
Facsimile: (212) 832-5815

with a copy to:

Locke Lord LLP
2800 JPMorgan Chase Tower
600 Travis
Houston, TX 77002
Attention: Joe Perillo
Telephone: (713) 226-1284
Facsimile: (713) 229-2610

and

Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
Attention: Bradley C. Vaiana and Jennifer C. Kurtis
Telephone: (212) 294-2609 or (212) 294-6675
Facsimile: (212) 294-4700

(c) If to any E Seller, to:

Eos Management, L.P.
320 Park Avenue, 9th Floor
New York, New York 10022
Attention: Mark First
Telephone: (212) 832-5807
Facsimile: (212) 832-5815

with a copy to:

Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
Attention: Bradley C. Vaiana and Jennifer C. Kurtis
Telephone: (212) 294-2609 or (212) 294-6675
Facsimile: (212) 294-4700;

SECTION 14.05. *Severability*. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or in any circumstance, is found to be invalid or unenforceable, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (ii) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

SECTION 14.06. *Successors and Assigns; Parties in Interest*. This Agreement shall be binding upon and shall inure solely to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns. Neither this Agreement nor any rights or obligations hereunder may be assigned by any party without the written consent of the other parties; *provided, however*, that the Purchaser may assign this Agreement or its rights, interests or obligations hereunder (including the right of the Purchaser to acquire all or any portion of the Direct Equity Interests, the Blocker Shares (other than any Redeemed Blocker Shares) and the Pierpont Interests) to any Affiliate of the Purchaser, but such assignment shall not relieve the Purchaser from its obligations hereunder. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person, other than the parties hereto and the Indemnitees (solely with respect to the provisions of Article XII), any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement, and no other Person shall be deemed a third-party beneficiary under or by reason of this Agreement.

SECTION 14.07. *Certain Rules of Construction*. The article and section headings and the table of contents contained in this Agreement are for convenience of reference only and shall in no way define, limit, extend or describe the scope or intent of any provisions of this Agreement. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. In addition, as used in this Agreement, unless otherwise provided to the contrary, (a) all references to days, months or years shall be deemed references to calendar days, months or years or (b) any reference to a “Section,” “Article” or “Exhibit” shall be deemed to refer to a section or article of this Agreement, a Schedule or an Exhibit attached to this Agreement. Unless the context otherwise requires, the words “hereof,” “herein,” and “hereunder” and words of similar import referring to this Agreement refer to this

Agreement as a whole and not to any particular provision of this Agreement. The words "include," "includes," or "including" shall be deemed to be followed by the words "without limitation." Unless otherwise specifically provided for herein, the term "or" shall not be deemed to be exclusive.

SECTION 14.08. *Entire Agreement*. This Agreement, together with the Exhibits and Schedules hereto, the Confidentiality Agreement and any other agreement or document executed in connection with this Agreement, constitutes the entire agreement among the Purchaser, the Seller and the Company with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous oral or written agreements between or among the parties with respect to the subject matter hereof (other than, to the extent provided herein, the Confidentiality Agreement).

SECTION 14.09. *Publicity*. The parties shall cooperate with each other in releasing information concerning this Agreement and the transactions contemplated hereby. No press releases or other public announcements concerning the transactions contemplated by this Agreement shall be made by any party without obtaining the written agreement of the other parties, except for any legally required communication by any party and then only with prior consultation with the other party; *provided*, that the E Sellers may disclose the existence and terms of this Agreement to their respective limited partners and prospective limited partners. The Sellers hereby acknowledge that they have been advised by the Purchaser that EXP, the parent company of the Purchaser, may have an obligation to file this Agreement as an exhibit to certain periodic or other reports filed by it pursuant to the Securities Exchange Act of 1934 and the Purchaser shall not be in violation of this Agreement if EXP files this Agreement if required pursuant thereto without further notice to or consultation with the other parties hereto.

SECTION 14.10. *Expenses*. Except as otherwise expressly provided herein, each of the parties hereto shall bear its own costs and expenses (including fees and disbursements of its counsel, accountants and other experts) incurred in connection with the preparation, negotiation, execution, delivery and performance of this Agreement and each of the other documents and instruments executed in connection herewith or in connection with the performance by it of its obligations under this Agreement and the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, the Purchaser shall be responsible for the payment of all filing fees due under the HSR Act with respect to the filings thereunder contemplated by this Agreement.

SECTION 14.11. *Choice of Law*. **This Agreement, together with any Claim, dispute, remedy or Legal Proceeding arising from or relating to this Agreement or the transactions contemplated hereby or any relief or remedies sought by any parties hereto, and the rights and obligations of the parties hereunder, shall be governed by and construed and enforced in accordance with the Laws of the State of Delaware, without regard to any conflicts of law provisions thereof that would cause the Laws of any other jurisdiction to apply.**

SECTION 14.12. *Choice of Forum; Waiver of Jury Trial*.

(a) Each of the parties irrevocably agrees that, except as otherwise expressly provided herein, any Claim, dispute or Legal Proceeding with respect to or in connection with this Agreement or the interpretation and enforcement hereof, or in respect of the transactions contemplated hereby, shall be brought and determined exclusively in the state or federal courts of or located in the State of Delaware (together with any applicable appellate court, regardless of location) (the "Delaware Courts"). Each of the parties hereby irrevocably submits with regard to any such Legal Proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the Delaware Courts and agrees that, subject to the express provisions of this Agreement, it will not bring any Legal Proceeding in connection with this Agreement or the interpretation or enforcement hereof, or in respect of the transactions contemplated hereby, in any court other than the Delaware Courts. Each of the parties hereby irrevocably waives, and agrees not to assert, as a defense in any Legal Proceeding in connection with this Agreement or the interpretation or enforcement hereof, or in respect of the transactions contemplated hereby, that it is not subject thereto or that such Legal Proceeding may not be brought or is not maintainable in the Delaware Courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts. The parties hereby consent to and grant to the extent permitted by applicable Law, any Delaware Court jurisdiction over the subject matter of any dispute contemplated by this Section 14.12(a) and agree that mailing of process or other papers in connection with any such Legal Proceeding in the manner provided in Section 14.04 or in such other manner as may be permitted by applicable Law shall be valid and sufficient service thereof.

(b) **Each party hereto hereby waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any Legal Proceeding directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated hereby. Each party hereto further (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of any Legal Proceeding, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waiver and certifications contained in this Section 14.12(b).**

SECTION 14.13. *Specific Enforcement*. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Delaware Courts.

SECTION 14.14. *Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument binding on all the parties, notwithstanding that all the parties are not signatories to the original or the same counterpart. If any signature is delivered by Electronic Transmission, such signature shall create a valid and binding obligation of the party executing the applicable document (or on whose behalf the signature is executed) with the same force and effect as if such signature were an original thereof.

SECTION 14.15. *Waiver of Conflicts; Attorney-Client Privilege*. Each of the Purchaser and the Company hereby agrees, on its own behalf and on behalf of its respective Subsidiaries and other Affiliates, and each of their respective successors and assigns (collectively, the "Waiving Parties"), that Winston & Strawn LLP ("Winston") and/or Locke Lord LLP ("Locke") (or any successor of either of the foregoing) may represent the Sellers, the Seller Representative and any director, manager, member, partner, officer, employee or Affiliate of any of the foregoing (collectively, the "Seller Group") in the event that any member of the Seller Group so requests, in each case in connection with any dispute, litigation, claim, proceeding or obligation arising out of or relating to this Agreement, the agreements or instruments to be entered into in connection with this Agreement or the transactions contemplated hereby or thereby (the "Waived Subject Matter") notwithstanding any representation of any of the Acquired Companies by Winston or Locke prior to the Closing. Each of the Purchaser and the Company on behalf of itself and the Waiving Parties hereby consents to any representation of the Seller Group after the Closing with respect to the Waived Subject Matter and irrevocably waives (and will not assert) any conflict of interest or any objection arising therefrom or relating thereto. The Waiving Parties acknowledge that the terms of this Section 14.15 shall be effective whether or not Winston or Locke provides legal services to any Acquired Company after the Closing Date. Each of the Purchaser and the Company, on behalf of itself and the Waiving Parties, hereby irrevocably acknowledges and agrees that all communications between or among the Seller Group and their counsel, including Winston and Locke, made prior to the Closing Date in connection with the Waived Subject Matter (collectively, the "Pre-Closing Communications") are privileged communications between or among the Seller Group and such counsel and neither any Waiving Party, nor any Person purporting to act on behalf of or through any of the Waiving Parties, (i) will seek to obtain any copies of any Pre-Closing Communications by any process or (ii) will assert any attorney-client privilege with respect to any Pre-Closing Communications.

[*Signature Page Follows*]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written by the duly authorized representatives of the parties hereto.

COMPANY:

CRS HOLDCO LLC

By: /s/ Stephen R. Horn
Name: Stephen R. Horn
Title: Vice Chairman

E SELLERS:

EOS PARTNERS, L.P.

By: EOS GENERAL, L.L.C.,
its general partner

By: /s/ Brian D. Young
Name: Brian D. Young
Title: Chairman

EOS CAPITAL PARTNERS IV, L.P.

By: EOS GENERAL IV, L.P.,
its general partner

By: ECP IV, LLC,
its general partner

By: /s/ Brian D. Young
Name: Brian D. Young
Title: Chairman

OTHER SELLERS:

ORIGINAL CRS LLC

By: /s/ Stephen R. Horn
Name: Stephen R. Horn
Title: Vice Chairman

/s/ Stephen Horn
Stephen Horn

/s/ Steven Cobb
Steven Cobb

BON ACCORD PARTNERS, L.P.

By: PIERPONT GP, LLC,
its general partner

By: /s/ Steve L. Cobb
Name: Steve L. Cobb
Title: Managing Member

SELLER REPRESENTATIVE:

CRS SELLER REPRESENTATIVE, LLC

By: /s/ Stephen R. Horn
Name: Stephen R. Horn
Title: Vice Chairman

PURCHASER:

NORTHERN WHITE SAND LLC

By: /s/ D. Craig Kesler
Name: D. Craig Kesler
Title: Senior Vice President and Treasurer

[*Signature Page to Securities Purchase Agreement*]

Exhibit 10.1

EAGLE MATERIALS INC.
Non-Employee Directors — Compensation Summary
Effective August 2014 to July 2015

On an annual basis, each non-employee director of Eagle Materials Inc. (the "Company") may select one of the following compensation packages for his or her performance of director services during the next 12 months:

(1) total annual compensation valued at $160,000, of which $75,000 is paid in cash and the remainder is provided in the form of an equity grant valued at $85,000; or

(2) an equity grant valued at $180,000. The grant date value of the equity grant under either alternative is allocated between restricted stock and options to purchase common stock of the Company, par value $0.01 ("Common Stock") (based upon the recommendation of the Compensation Committee) with respect to each non-employee director.

In accordance with the terms of the Eagle Materials Inc. Amended and Restated Incentive Plan, the exercise price of the stock options is set at the closing price of the Common Stock on the New York Stock Exchange on the date of grant. The number of option shares granted is determined as of the date of the grant by using the Black-Scholes method. All options granted to directors in August 2014 were fully exercisable when granted and have a ten-year term.

The restricted stock granted to directors in August 2014 was earned on the date of grant; however, the shares will not become fully vested (unrestricted) until the recipient's retirement from the Board in accordance with the Company's director retirement policy, or under such circumstances as are approved by the Compensation Committee. During the restriction period the director will have the right to vote the shares. In addition, the director will also be entitled to cash dividends as and when the Company issues a cash dividend on the Common Stock. Notwithstanding the above, the restricted shares issued to Mr. Hirsch do not have voting rights and are not entitled to cash dividends, but rather to a dividend-equivalent payment.

Non-employee directors who chair committees of the Board of Directors receive additional annual compensation. The Governance Committee Chair receives a fee of $10,000 per year. The chairs of the Audit Committee and the Compensation Committee each receive a fee of $15,000 per year. The Chairman of the Board of Directors receives a fee of $50,000 per year. Chairpersons who elect to receive all Board compensation in the form of equity may also elect to receive this additional compensation in the form of options to purchase Common Stock, in which case a 26.67% premium is added to such fees when valuing the number of options to be received by such chairperson.

If non-employee directors hold unvested restricted stock units ("RSUs") granted as part of director compensation in prior fiscal years (which currently includes Messrs. Barnett, Hirsch and Nicolais), these directors will receive dividend equivalent units as and when the Company issues a cash dividend on the Common Stock, in accordance with the terms of the RSUs.

All directors are reimbursed for reasonable expenses of attending meetings.

Exhibit 10.2

EAGLE MATERIALS INC.

AMENDED AND RESTATED INCENTIVE PLAN

NON-QUALIFIED STOCK OPTION AGREEMENT

This option agreement (the "Option Agreement" or "Agreement") entered into between Eagle Materials Inc., a Delaware corporation (the "Company"), and (the "Optionee"), an employee of the Company or its Affiliates, with respect to a right (the "Option") awarded to the Optionee under the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), on June 3, 2014 (the "Award Date") to purchase from the Company up to but not exceeding in the aggregate shares of the Company's common stock, par value $0.01 per share (the "Common Stock"), at a price of $87.37 per share (the "Exercise Price"), such number of shares and such price per share being subject to adjustment as provided in the Plan, and further subject to the following terms and conditions:

1. Relationship to Plan

This Option is subject to all of the terms, conditions and provisions of the Plan and administrative interpretations thereunder, if any, which have been adopted by the Company's Compensation Committee ("Committee") and are in effect on the date hereof. Except as defined herein, capitalized terms shall have the same meanings ascribed to them under the Plan. For purposes of this Option Agreement:

(a) "*Disability*" shall be determined by the Committee.

(b) "*Return on Equity*" for any fiscal year shall mean: (i) the Net Earnings of the Company (net of any discontinued operations) for such fiscal year; divided by (ii) the Company's Average Stockholders' Equity for such fiscal year.

(c) "*Average Stockholders' Equity*" for any period shall mean: (i) the Company's Total Stockholders' Equity as of the beginning of such period plus the Company's Total Stockholders' Equity at the end of such period; divided by (ii) 2.

(d) "*Retirement*" shall mean a retirement approved by the Board.

(e) "*Service Vesting Date*" means the first or second anniversary of the end of the Performance Period, as applicable.

(f) "*Performance Period*" means the period commencing on April 1, 2014 and ending on March 31, 2015.

2. Vesting and Exercise Schedules.

(a) Vesting Criteria. The shares of Common Stock covered by this Option ("Option Shares") shall vest in accordance with the vesting schedule set forth below in this Section 2 (each such vesting date, a "Vesting Date") only if the Average Return on Equity for the ten fiscal years ending March 31, 2015 is at least 15.00% (the "Performance Criteria"); provided, that if the Performance Criteria is satisfied, the Compensation Committee may exercise negative discretion and provide that the Optionee shall earn less than 100% of the Option Shares after taking into consideration the extent to which the Optionee has achieved his/her individual goals attached hereto as Exhibit A. The "Average Return on Equity for the ten fiscal years ending March 31, 2015" shall mean: (i) the sum of the Return on Equity for each of the ten fiscal years ended March 31, 2015, divided by (ii) 10.

After the end of the Performance Period, the Compensation Committee shall certify whether the Performance Criteria has been satisfied ("Certification Date"), and if so, to what extent (if any) the Compensation Committee will exercise negative discretion to provide that the Optionee shall earn less than 100% of the Option Shares. Following the Certification Date, any unearned Option Shares shall be forfeited.

(b) Exercisability. The earned Option Shares shall vest and become exercisable one-third promptly following the Certification Date and then ratably on the next two Service Vesting Dates. The Optionee must be in continuous service as an employee of the Company or any of its Affiliates or as a Director from the Award Date through the applicable Service Vesting Date on which the portion of the Option Shares would otherwise become exercisable in order for the Option to become exercisable with respect to that portion of the Option Shares, otherwise such Option Shares shall be forfeited. Notwithstanding the foregoing, in the event the Optionee's employment and, if applicable, service as a Director terminates by reason of death, Disability or Retirement following the end of the Performance Period and prior to any Service Vesting Date, any then exercisable Option Shares shall continue to be exercisable for a period of two years following such termination, and any earned but unexercisable Option Shares shall continue to become exercisable as if the Optionee had remained employed or continued to serve as a Director for a period of two years following such termination.

To the extent the Option becomes exercisable, such Option may be exercised in whole or in part (at any time or from time to time, except as otherwise provided herein) until expiration of the Option pursuant to the terms of this Agreement or the Plan.

(c) Calculations. The Committee shall have the authority to approve the calculations involving the "Average Return on Equity for the ten fiscal years ending March 31, 2015" for purposes of vesting, and its approval of such calculations shall be final, conclusive and binding on all parties; provided, that the computation shall be adjusted to account for any business acquisition or disposition that occurs after the Award Date.

(d) Change in Control. This Option shall become fully vested and exercisable, without regard to the limitations set forth in subparagraph (a) above, provided that the Optionee has been in continuous employment with the Company or any of its Affiliates or served as a Director from the Award Date through the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), unless either (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Option is to be replaced within a reasonable time after the Change in Control with an option of equivalent value to purchase shares of the surviving parent corporation or (ii) the Option is to be settled in cash in accordance with the last sentence of this subparagraph (d). Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Option by a cash payment equal to the difference between the Fair Market Value per share of Common Stock on the settlement date and the Exercise Price for the Option, multiplied by the number of shares then subject to the Option.

3. Termination of Option.

The Option hereby granted shall terminate and be of no force and effect with respect to any Option Shares not previously purchased by the Optionee at the earliest time specified below:

(a) the tenth anniversary of the Award Date;

(b) if Optionee's employment with the Company and its Affiliates or service as a Director is terminated by the Company or a Subsidiary for "cause" (as determined by the Committee) at any time after the Award Date, then the Option shall terminate immediately upon such termination of Optionee's employment or service;

(c) if Optionee's employment with the Company and its Affiliates and, if applicable, service as a Director is terminated for any reason other than death, Disability, Retirement or termination for "cause," then the Option shall terminate on the first business day following the expiration of the 90-day period beginning on such date of termination; or

(d) if Optionee's employment with the Company and its Affiliates and, if applicable, service as a Director is terminated due to the death, Disability or Retirement of the Optionee, and in any such case such termination is at any time after the Award Date, then the Option shall terminate on the later of (i) the first business day following the expiration of the two-year period following such termination and (ii) with respect to any Option Shares which become exercisable after such termination, the first business day following the expiration of the 90-day period beginning on the date the Options Shares first become exercisable.

4. Exercise of Option.

Subject to the limitations set forth herein and in the Plan, this Option may be exercised by notice provided to the Company as set forth in Section 5. The payment of the Exercise Price for the Common Stock being purchased pursuant to the Option shall be made (a) in cash, by check or cash equivalent, (b) by tender to the Company, or attestation to the ownership, of Common Stock owned by the Optionee having a Fair Market Value (as determined by the Company without regard to any restrictions on transferability applicable to such Common Stock by reason of federal or state securities laws or agreements with an underwriter for the Company) not less than the Exercise Price, (c) by delivery of a properly executed notice together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System), (d) by withholding Option Shares equal to the Exercise Price multiplied by the number of Options exercised divided by the Fair Market Value at the time of exercise, rounded up to the nearest whole share, (e) by such other consideration as may be approved by the Board from time to time to the extent permitted by applicable law, or (f) by any combination thereof. Such notice shall be accompanied by cash or Common Stock in the full amount of all federal and state withholding or other employment taxes applicable to the taxable income of such Optionee resulting from such exercise (or instructions to satisfy such withholding obligation by withholding Option Shares in accordance with Section 8). Notwithstanding the foregoing, if the Exercise Price of the outstanding portion of the Option is less than the Fair Market Value of a share of Common Stock on the day the Option would otherwise expire as provided in Section 3(a), then the Option shall be automatically exercised in full pursuant to clause (d) above immediately prior to its expiration.

If the Optionee desires to pay the purchase price for the Option Shares by tendering Common Stock using the method of attestation, the Optionee may, subject to any such conditions and in compliance with any such procedures as the Committee may adopt, do so by attesting to the ownership of Common Stock of the requisite value, in which case the Company shall issue or otherwise deliver to the Optionee upon such exercise a number of Option Shares equal to the result obtained by dividing (a) the excess of the aggregate Fair Market Value of the total number shares of Common Stock subject to the Option for which the Option (or portion thereof) is being exercised over the purchase price payable in respect of such exercise by (b) the Fair Market Value per share of Common Stock subject to the Option, and the Optionee may retain the shares of Common Stock the ownership of which is attested.

Notwithstanding anything to the contrary contained herein, the Optionee agrees that he will not exercise the Option granted pursuant hereto, and the Company will not be obligated to issue any Option Shares pursuant to this Option Agreement, if the exercise of the Option or the issuance of such shares would constitute a violation by the Optionee or by the Company of any provision of any law or regulation of any governmental authority or any stock exchange or transaction quotation system. The Optionee agrees that, unless the options and shares covered by the Plan have been registered pursuant to the Securities Act of 1933, as amended, the Company may, at its election, require the Optionee to give a representation in writing in form and substance satisfactory to the Company to the effect that he is acquiring such shares for his own account for investment and not with a view to, or for sale in connection with, the distribution of such shares or any part thereof.

If any law or regulation requires the Company to take any action with respect to the shares specified in such notice, the time for delivery thereof, which would otherwise be as promptly as reasonably practicable, shall be postponed for the period of time necessary to take such action.

5. Notices.

Notice of exercise of the Option must be made in the following manner, using such forms as the Company may from time to time provide:

(a) by electronic means as designated by the Committee, in which case the date of exercise shall be the date when receipt is acknowledged by the Company;

(b) by registered or certified United States mail, postage prepaid, to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek, Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date of mailing; or

(c) by hand delivery or otherwise to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek, Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date when receipt is acknowledged by the Company.

Notwithstanding the foregoing, in the event that the address of the Company is changed prior to the date of any exercise of this Option, notice of exercise shall instead be made pursuant to the foregoing provisions at the Company's current address.

Any other notices provided for in this Agreement or in the Plan shall be given in writing or by such electronic means, as permitted by the Committee, and shall be deemed effectively delivered or given upon receipt or, in the case of notices delivered by the Company to the Optionee, five days after deposit in the United States mail, postage prepaid, addressed to the Optionee at the address specified at the end of this Agreement or at such other address as the Optionee hereafter designates by written notice to the Company.

6. Assignment of Option.

Except as otherwise permitted by the Committee, the rights of the Optionee under the Plan and this Agreement are personal; no assignment or transfer of the Optionee's rights under and interest in this Option may be made by the Optionee otherwise than by will, by beneficiary designation, by the laws of descent and distribution or by a qualified domestic relations order; and this Option is exercisable during his lifetime only by the Optionee, except as otherwise expressly provided in this Agreement.

After the death of the Optionee, exercise of the Option shall be permitted only by the Optionee's designated beneficiary or, in the absence of a designated beneficiary, the Optionee's executor or the personal representative of the Optionee's estate (or by his assignee, in the event of a permitted assignment) to the extent that the Option is exercisable on or after the date of the Optionee's death, as set forth in Sections 2(a) and 3(d) hereof.

7. Stock Certificates.

Certificates or other evidences of or representing the Common Stock issued pursuant to the exercise of the Option will bear all legends required by law and necessary or advisable to effectuate the provisions of the Plan and this Option.

8. Withholding.

No certificates representing shares of Common Stock purchased hereunder shall be delivered to or in respect of an Optionee unless the amount of all federal, state and other governmental withholding tax requirements imposed upon the Company with respect to the issuance of such shares of Common Stock has been remitted to the Company or unless provisions to pay such withholding requirements have been made to the satisfaction of the Committee. The Committee may make such provisions as it may deem appropriate for the withholding of any taxes which it determines is required in connection with this Option. The Optionee may pay all or any portion of the taxes required to be withheld by the Company or paid by the Optionee in connection with the exercise of all or any portion of this Option by delivering cash, or, pursuant to Committee-approved procedures, by electing to have the Company withhold shares of Common Stock, or by delivering previously owned shares of Common Stock sufficient to satisfy the tax withholding obligation. The Optionee must make the foregoing election on or before the date that the amount of tax to be withheld is determined.

9. Shareholder Rights.

The Optionee shall have no rights of a shareholder with respect to shares of Common Stock subject to the Option unless and until such time as the Option has been exercised and ownership of such shares of Common Stock has been transferred to the Optionee.

10. Successors and Assigns.

This Agreement shall bind and inure to the benefit of and be enforceable by the Optionee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Optionee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

11. No Employment Guaranteed.

No provision of this Option Agreement shall confer any right upon the Optionee to continued employment with the Company or any Subsidiary.

12. Governing Law.

This Option Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.

13. Amendment.

This Agreement cannot be modified, altered or amended except by an agreement, in writing, signed by both the Company and the Optionee.

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EAGLE MATERIALS INC.

Date:

By: _____
Name: Steven R. Rowley
Title: President and CEO

The Optionee hereby accepts the foregoing Option Agreement, subject to the terms and provisions of the Plan and administrative interpretations thereof referred to above.

OPTIONEE:

Date:

_____
Eagle Materials Inc.
3811 Turtle Creek Blvd., Suite 1100
Dallas, Texas 75219

EXHIBIT A

INDIVIDUAL GOALS

See attached.

EXHIBIT B

CHANGE-IN-CONTROL

For the purpose of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless,

(e) immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

(i) the term "Person" means an individual, entity or group;

(ii) the term "group" is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;

(iii) the terms "beneficial owner", "beneficial ownership" and "beneficially own" are used as defined for purposes of Rule 13d-3 under the Exchange Act;

(iv) the term "Business Combination" means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;

(v) the term "Company Common Stock" shall mean the Common Stock, par value $.01 per share, of the Company;

(vi) the term “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(vii) the phrase “parent corporation resulting from a Business Combination” means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries;

(viii) the term “Major Asset Disposition” means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;

(ix) the term “Acquiring Entity” means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and

(x) the phrase “substantially the same proportions,” when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

Exhibit 10.3

EAGLE MATERIALS INC.

AMENDED AND RESTATED INCENTIVE PLAN

RESTRICTED STOCK AGREEMENT

Eagle Materials Inc., a Delaware corporation (the "Company"), and (the "Grantee") hereby enter into this Restricted Stock Award Agreement (the "Agreement") in order to set forth the terms and conditions of the Company's award (the "Award") to the Grantee of certain shares of Common Stock of the Company granted to the Grantee on June 3, 2014 (the "Award Date").

1. Award. The Company hereby awards to the Grantee shares of Common Stock of the Company (the "Shares").

2. Relationship to the Plan. The Award shall be subject to the terms and conditions of the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), this Agreement and such administrative interpretations of the Plan, if any, as may be in effect on the date of this Agreement. Except as defined herein, capitalized terms shall have the meanings ascribed to them under the Plan. For purposes of this Agreement:

(a) "*Disability*" shall be determined by the Committee.

(b) "*Return on Equity*" for any fiscal year shall mean: (i) the Net Earnings of the Company (net of any discontinued operations) for such fiscal year; divided by (ii) the Company's Average Stockholders' Equity for such fiscal year.

(c) "*Average Stockholders' Equity*" for any period shall mean: (i) the Company's Total Stockholders' Equity as of the beginning of such period plus the Company's Total Stockholders' Equity at the end of such period; divided by (ii) 2.

(d) "*Retirement*" shall mean a retirement approved by the Board.

(e) "*Service Vesting Date*" means the first, second, third or fourth anniversary of the end of the Performance Period, as applicable.

(f) "*Performance Period*" shall mean the period commencing on April 1, 2014 and ending on March 31, 2015.

3. Vesting.

(a) Vesting Criteria. The Grantee's interest in the Shares shall vest in accordance with the vesting schedule set forth below in this Section 3(a) (each such vesting date, a "Vesting Date") only if the Average Return on Equity for the ten fiscal years ending March 31, 2015 is at least 15.00% (the "Performance Criteria"); provided, that if the Performance Criteria is satisfied, the Compensation Committee may exercise negative discretion and provide that the Grantee shall earn less than 100% of the Shares after taking into consideration the extent to which the Grantee has achieved his/her individual goals attached hereto as Exhibit A. After the end of the Performance Period, the Compensation Committee shall certify whether the Performance Criteria has been satisfied ("Certification Date"), and if so, to what extent (if any) the Compensation Committee will exercise negative discretion to provide that the Grantee shall earn less than 100% of the Shares (such earned Shares shall be considered "Earned But Unvested Shares" hereunder). Such Earned But Unvested Shares shall vest one-fifth on the second business day following the Certification Date and then ratably on the next four Service Vesting Dates. Prior to the Certification Date, all Shares shall be considered "Unvested Shares." If the Performance Criteria has not been satisfied then the Shares shall be immediately and automatically forfeited. The "Average Return on Equity for the ten fiscal years ending March 31, 2015" shall mean: (i) the sum of the Return on Equity for each of the ten fiscal years ended March 31, 2015, divided by (ii) 10.

(b) Restrictions. The period beginning on the Award Date and ending on the date immediately preceding the Vesting Date for a Share shall be known as the restriction period (the "Restriction Period"). During the Restriction Period, the Grantee may not sell, transfer, pledge, exchange, hypothecate, or otherwise dispose of any unvested Shares or any right or interest related to such unvested Shares, other than as required by the Grantee's will or beneficiary designation, in accordance with the laws of descent and distribution or by a qualified domestic relations order.

(c) Cancellation Right. The Grantee must be in continuous service as an employee of the Company or any of its Affiliates or as a Director from the Award Date through the applicable Vesting Date for an unvested Share to become vested. Subject to Section 4, Grantee's termination of employment and, if applicable, service as a Director prior to the Vesting Date shall cause the unvested Shares to be automatically forfeited as of such discontinuation of service date.

(d) Calculations. The Committee shall have the authority to approve the calculations involving the "Average Return on Equity for the ten fiscal years ending March 31, 2015" for purposes of vesting, and its approval of such calculations shall be final, conclusive and binding on all parties; provided, that the computation shall be adjusted to account for any business acquisition or disposition that occurs after the Award Date.

4. Change-in-Control; Death or Disability; Retirement. The restrictions set forth above in Section 3 shall lapse with respect to any Shares (in the case of a Change in Control) or Earned But Unvested Shares (in the case of termination of employment and, if applicable, discontinuation of service as a Director by reason of death, Disability or Retirement) not previously forfeited and the remaining shares of this Award shall become fully vested without regard to the limitations set forth in Section 3 above, provided that the Grantee has been in continuous employment with the Company or any of its Affiliates or has been in continuous service as a Director from the Award Date through: (A) the occurrence of a Change in Control (as defined in Exhibit B to this Agreement), unless either: (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Award is to be replaced within a reasonable time after the Change in Control with an award of equivalent value of shares of the surviving parent corporation, or (ii) the Award is to be settled in cash in accordance with the last sentence of this Section 4, or (B) Grantee's termination of employment and, if applicable, discontinuation of service as a Director by reason of death, Disability or Retirement. Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Award by a cash payment that the Committee shall determine in its sole discretion is equal to the fair market value of the Award on the date of such event.

5. Stockholder Rights. The Grantee shall have the right to vote the Shares. On the first dividend payment date following the Certification Date, the Grantee shall be entitled to a cash dividend payment equal to: (i) the sum of per share dividends paid with respect to Common Stock during the Performance Period after the Award Date; provided, the record date for such dividend payment is on or after the Award Date; times (ii) the number of non-forfeited Shares. The Grantee shall also have the right to receive any cash dividends paid on Earned But Unvested Shares after the end of the Performance Period at the same time such amounts are paid with respect to all other shares of Common Stock.

6. Capital Adjustments and Corporate Events. If, from time to time during the term of the Restriction Period, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, the Shares shall be adjusted in accordance with the provisions of Section 15 of the Plan. Any and all new, substituted or additional securities to which the Grantee may be entitled by reason of the Grantee's ownership of the Shares hereunder because of a capital adjustment shall be immediately subject to the restrictions set forth herein and included thereafter as Shares for purposes of this Agreement.

7. Refusal to Transfer.

The Company shall not be required:

(a) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or the Plan; or

(b) to treat such purchaser or other transferee as owner of such Shares, accord such purchaser or other transferee the right to vote; or pay or deliver dividends or other distributions to such purchaser or other transferee with respect to such Shares.

8. Legends. If the Shares are certificated, the certificate or certificates evidencing the Shares, if any, issued hereunder shall be endorsed with the following legend:

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS AND, ACCORDINGLY, MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED, OR IN ANY MANNER DISPOSED OF EXCEPT IN CONFORMITY WITH THE TERMS OF THAT CERTAIN RESTRICTED STOCK AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES. A COPY OF SUCH AGREEMENT IS MAINTAINED AT THE ISSUER'S PRINCIPAL CORPORATE OFFICES.

9. Tax Consequences. The Grantee has reviewed with the Grantee's own tax advisors the federal, state, and local tax consequences of this investment and the transactions contemplated by this Agreement. The Grantee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands that the Grantee (and not the Company) shall be responsible for the Grantee's own tax liability that may arise as a result of the transactions contemplated by this Agreement. The Grantee understands that Section 83 of the Code taxes as ordinary income the difference between the purchase price, if any, for the Shares and the Fair Market Value of the Shares as of the date any restrictions on the Shares lapse. In this context, "restriction" means the restrictions imposed during the Restriction Period. The Grantee understands that the Grantee may elect to be taxed at the time the Shares are awarded rather than when and as the restrictions lapse by filing an election under Section 83(b) of the Code with the Internal Revenue Service within 30 days from the Award Date. THE GRANTEE ACKNOWLEDGES THAT IT IS THE GRANTEE'S SOLE RESPONSIBILITY (AND NOT THE COMPANY'S) TO FILE TIMELY THE ELECTION UNDER SECTION 83(B), EVEN IF THE GRANTEE REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON THE GRANTEE'S BEHALF.

10. Withholding of Taxes. At the time and to the extent vested Shares become compensation income to the Grantee for federal or state income tax purposes, the Grantee either shall deliver to the Company such amount of money as required to meet the Company's minimum withholding obligation under applicable tax laws or regulations, or, in lieu of cash, the Grantee, in his or her sole discretion, may elect to surrender, or direct the Company to withhold from the vested Shares, shares of Common Stock in such number as necessary to satisfy the Company's minimum tax withholding obligations. Further, any dividends paid to you pursuant to Section 5 above prior to the end of the Restriction Period will generally be subject to federal, state and local withholding, as appropriate, as additional compensation.

11. Entire Agreement; Governing Law. The Plan and this Agreement constitute the entire agreement of the Company and the Grantee (collectively, the "Parties") with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Parties with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Parties. Nothing in the Plan and this Agreement (except as expressly provided therein or herein) is intended to confer any rights or remedies on any person other than the Parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of Texas, without giving effect to any choice-of-law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Texas to the rights and duties of the Parties. Should any provision of the Plan or this Agreement relating to the Shares be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

12. Interpretive Matters. Whenever required by the context, pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, or neuter, and the singular shall include the plural, and vice versa. The term "include" or "including" does not denote or imply any limitation. The term "business day" means any Monday through Friday other than such a day on which banks are authorized to be closed in the State of Texas. The captions and headings used in this Agreement are inserted for convenience and shall not be deemed a part of the Award or this Agreement for construction or interpretation.

13. Notice. Any notice or other communication required or permitted hereunder shall be given in writing and shall be deemed given, effective, and received upon prepaid delivery in person or by courier or upon the earlier of delivery or the third business day after deposit in the United States mail if sent by certified mail, with postage and fees prepaid, addressed to the other Party at its address as shown beneath its signature in this Agreement, or to such other address as such Party may designate in writing from time to time by notice to the other Party.

14. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Grantee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Grantee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

[Signature page follows.]

EAGLE MATERIALS INC.

Dated: , 2014

By: _____
Name: Steven R. Rowley
Its: President and CEO
Address: 3811 Turtle Creek Boulevard, Suite 1100
Dallas, Texas 75219

The Grantee acknowledges receipt of a copy of the Plan, represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Award subject to all of the terms and provisions hereof and thereof. The Grantee has reviewed this Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of this Agreement and the Plan. The Grantee further agrees to notify the Company upon any change in the address for notice indicated in this Agreement.

Dated: , 2014

Signed: _____
Name:
Address: Eagle Materials Inc.
3811 Turtle Creek Boulevard, Suite 1100
Dallas, Texas 75219

EXHIBIT A

INDIVIDUAL GOALS

See attached.

EXHIBIT B

CHANGE-IN-CONTROL

For the purpose of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless, immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

(i) the term "*Person*" means an individual, entity or group;

(ii) the term "*group*" is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;

(iii) the terms "*beneficial owner*", "*beneficial ownership*" and "*beneficially own*" are used as defined for purposes of Rule 13d-3 under the Exchange Act;

(iv) the term "*Business Combination*" means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;

(v) the term "*Company Common Stock*" shall mean the Common Stock, par value $.01 per share, of the Company;

(vi) the term "*Exchange Act*" means the Securities Exchange Act of 1934, as amended;

(vii) the phrase "*parent corporation resulting from a Business Combination*" means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries;

(viii) the term "*Major Asset Disposition*" means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;

(ix) the term "*Acquiring Entity*" means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and

(x) the phrase "*substantially the same proportions*," when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

Exhibit 10.4

EAGLE MATERIALS INC.
AMENDED AND RESTATED INCENTIVE PLAN

NON-QUALIFIED DIRECTOR STOCK OPTION AGREEMENT

This option agreement (the "Option Agreement" or "Agreement") entered into between EAGLE MATERIALS INC., a Delaware corporation (the "Company"), and (the "Optionee"), a director of the Company, with respect to a right (the "Option") awarded to the Optionee under the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), on August 7, 2014 (the "Award Date") to purchase from the Company up to but not exceeding in the aggregate shares of Common Stock (as defined in the Plan) at a price of $91.95 per share (the "Exercise Price"), such number of shares and such price per share being subject to adjustment as provided in the Plan, and further subject to the following terms and conditions:

1. *Relationship to Plan*.

This Option is subject to all of the terms, conditions and provisions of the Plan and administrative interpretations thereunder, if any, which have been adopted by the Company's Compensation Committee ("Committee") and are in effect on the date hereof. Except as defined herein, capitalized terms shall have the same meanings ascribed to them under the Plan. For purposes of this Option Agreement:

"*Retirement*" shall mean termination of service on the Board at the Company's mandatory retirement age in accordance with the Company's director retirement policy or earlier on such terms and conditions as approved by the Committee.

2. *Exercise Schedule*.

(a) *Exercisability*. This Option may be exercised to purchase the shares of Common Stock covered thereby (the "Option Shares") immediately on the Award Date. Such Option may be exercised in whole or in part (at any time or from time to time, except as otherwise provided herein) until expiration of the Option pursuant to the terms of this Agreement or the Plan.

(b) *Change in Control*. Upon the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), (i) this Option may be replaced within a reasonable time after the Change in Control with an option of equivalent value to purchase shares of the surviving parent corporation if the Committee determines that the terms giving rise to the Change in Control provide for such replacement, or (ii) the Option may be settled in cash in accordance with the last sentence of this subparagraph (b). Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Option by a cash payment equal to the difference between the Fair Market Value per share of Common Stock on the settlement date and the Exercise Price for the Option, multiplied by the number of shares then subject to the Option.

3. *Termination of Option*.

The Option hereby granted shall terminate and be of no force and effect with respect to any Option Shares not previously purchased by the Optionee at the earliest time specified below:

(a) the tenth anniversary of the Award Date;

(b) if Optionee's service as a Director is terminated by the Company for "cause" (as determined by the Committee) at any time after the Award Date, then the Option shall terminate immediately upon such termination of Optionee's service;

(c) if Optionee's service as a Director is terminated due to Retirement, then this Option shall terminate on the tenth anniversary of the Award Date;

(d) if Optionee's service as a Director is terminated due to death at any time after the Award Date and while in the service of the Company or within 90 days after such termination of service, then the Option shall terminate on the first business day following the expiration of the one-year period which began on the date of Optionee's death; or

(e) if Optionee's service as a Director is terminated for any reason other than death, Retirement or termination for "cause," then the Option shall terminate on the first business day following the expiration of the 90-day period beginning on the date of termination of Optionee's service.

4. *Exercise of Option*.

Subject to the limitations set forth herein and in the Plan, this Option may be exercised by notice provided to the Company as set forth in Section 5. The payment of the Exercise Price for the Option Shares being purchased pursuant to the Option shall be made (a) in cash, by check or cash equivalent, (b) by tender to the Company, or attestation to the ownership, of Common Stock owned by the Optionee having a Fair Market Value (as determined by the Company without regard to any restrictions on transferability applicable to such Common Stock by reason of federal or state securities laws or agreements with an underwriter for the Company) not less than the Exercise Price, (c) by delivery of a properly executed notice together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System), (d) by withholding Option Shares equal to the Exercise Price multiplied by the number of Options exercised divided by the Fair Market Value at the time of exercise, rounded up to the nearest whole share, (e) by such other consideration as may be approved by the Board from time to time to the extent permitted by applicable law, or (f) by any combination thereof. Notwithstanding the foregoing, if the Exercise Price of the outstanding portion of the Option is less than the Fair Market Value of a share of Common Stock on the day the Option would otherwise expire as provided in Section 3(a), then the Option shall be automatically exercised in full pursuant to clause (d) above immediately prior to its expiration.

If the Optionee desires to pay the purchase price for the Option Shares by tendering Common Stock using the method of attestation, the Optionee may, subject to any such conditions and in compliance with any such procedures as the Committee may adopt, do so by attesting to the ownership of Common Stock of the requisite value, in which case the Company shall issue or otherwise deliver to the Optionee upon such exercise a number of Option Shares equal to the result obtained by dividing (a) the excess of the aggregate Fair Market Value of the total number shares of Common Stock subject to the Option for which the Option (or portion thereof) is being exercised over the purchase price payable in respect of such exercise by (b) the Fair Market Value per share of Common Stock subject to the Option, and the Optionee may retain the shares of Common Stock the ownership of which is attested.

Notwithstanding anything to the contrary contained herein, the Optionee agrees that he will not exercise the Option granted pursuant hereto, and the Company will not be obligated to issue any Option Shares pursuant to this Option Agreement, if the exercise of the Option or the issuance of such shares would constitute a violation by the Optionee or by the Company of any provision of any law or regulation of any governmental authority or any stock exchange or transaction quotation system. The Optionee agrees that, unless the options and shares covered by the Plan have been registered pursuant to the Securities Act of 1933, as amended (the “Act”), the Company may, at its election, require the Optionee to give a representation in writing in form and substance satisfactory to the Company to the effect that he is acquiring such shares for his own account for investment and not with a view to, or for sale in connection with, the distribution of such shares or any part thereof.

If any law or regulation requires the Company to take any action with respect to the shares specified in such notice, the time for delivery thereof, which would otherwise be as promptly as reasonably practicable, shall be postponed for the period of time necessary to take such action.

5. *Notices.*

Notice of exercise of the Option must be made in the following manner, using such forms as the Company may from time to time provide:

(b) by electronic means as designated by the Committee, in which case the date of exercise shall be the date when receipt is acknowledged by the Company;

(c) by registered or certified United States mail, postage prepaid, to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date of mailing; or

(d) by hand delivery or otherwise to Eagle Materials Inc., Attention: Secretary, 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219, in which case the date of exercise shall be the date when receipt is acknowledged by the Company.

Notwithstanding the foregoing, in the event that the address of the Company is changed prior to the date of any exercise of this Option, notice of exercise shall instead be made pursuant to the foregoing provisions at the Company’s current address.

Any other notices provided for in this Agreement or in the Plan shall be given in writing or by such electronic means, as permitted by the Committee, and shall be deemed effectively delivered or given upon receipt or, in the case of notices delivered by the Company to the Optionee, five days after deposit in the United States mail, postage prepaid, addressed to the Optionee at the address specified at the end of this Agreement or at such other address as the Optionee hereafter designates by written notice to the Company.

6. *Assignment of Option*.

Except as otherwise permitted by the Committee, the rights of the Optionee under the Plan and this Agreement are personal; no assignment or transfer of the Optionee's rights under and interest in this Option may be made by the Optionee otherwise than by will, by beneficiary designation, by the laws of descent and distribution or by a qualified domestic relations order; and this Option is exercisable during his lifetime only by the Optionee, except as otherwise provided in this Agreement.

After the death of the Optionee, exercise of the Option shall be permitted only by the Optionee's designated beneficiary or, in the absence of a designated beneficiary, the Optionee's executor or the personal representative of the Optionee's estate (or by his assignee, in the event of a permitted assignment) and only to the extent that the Option was exercisable on the date of the Optionee's death.

7. *Stock Certificates*.

Certificates representing the Common Stock issued pursuant to the exercise of the Option will bear all legends required by law and necessary or advisable to effectuate the provisions of the Plan and this Option. The Company may place a "stop transfer" order against shares of the Common Stock issued pursuant to the exercise of this Option until all restrictions and conditions set forth in the Plan or this Agreement and in the legends referred to in this Section 7 have been complied with.

8. *Shareholder Rights*.

The Optionee shall have no rights of a shareholder with respect to shares of Common Stock subject to the Option unless and until such time as the Option has been exercised and ownership of such shares of Common Stock has been transferred to the Optionee.

9. *Successors and Assigns*.

This Agreement shall bind and inure to the benefit of and be enforceable by the Optionee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Optionee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

10. *No Service Guaranteed*.

No provision of this Option Agreement shall confer any right upon the Optionee to continued service with the Company.

11. *Governing Law*.

This Option Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.

12. *Amendment*.

This Agreement cannot be modified, altered or amended except by an agreement, in writing, signed by both the Company and the Optionee.

EAGLE MATERIALS INC.

Date:

By: _____
Name: Steven R. Rowley
Title: President and CEO

The Optionee hereby accepts the foregoing Option Agreement, subject to the terms and provisions of the Plan and administrative interpretations thereof referred to above.

OPTIONEE:

Date:

Optionee's Address:

EXHIBIT A

Change in Control

For the purpose of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless, immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

(i) the term "Person" means an individual, entity or group;

(ii) the term "group" is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;

(iii) the terms "beneficial owner", "beneficial ownership" and "beneficially own" are used as defined for purposes of Rule 13d-3 under the Exchange Act;

(iv) the term "Business Combination" means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;

(v) the term "Company Common Stock" shall mean the Common Stock, par value $.01 per share, of the Company;

(vi) the term "Exchange Act" means the Securities Exchange Act of 1934, as amended;

(vii) the phrase “parent corporation resulting from a Business Combination” means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries;

(viii) the term “Major Asset Disposition” means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;

(ix) the term “Acquiring Entity” means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and

(x) the phrase “substantially the same proportions,” when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

Exhibit 10.5

EAGLE MATERIALS INC.

AMENDED AND RESTATED INCENTIVE PLAN

RESTRICTED STOCK AGREEMENT

Eagle Materials Inc., a Delaware corporation (the "Company"), and (the "Grantee") hereby enter into this Restricted Stock Award Agreement (the "Agreement") in order to set forth the terms and conditions of the Company's award (the "Award") to the Grantee of certain shares of Common Stock of the Company granted to the Grantee on August 7, 2014 (the "Award Date").

1. Award. The Company hereby awards to the Grantee shares of Common Stock of the Company (the "Shares").

2. Relationship to the Plan. The Award shall be subject to the terms and conditions of the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), this Agreement and such administrative interpretations of the Plan, if any, as may be in effect on the date of this Agreement. Except as defined herein, capitalized terms shall have the meanings ascribed to them under the Plan. For purposes of this Agreement:

(a) "Restriction Period" shall mean the period beginning on the Award Date and ending on the date immediately preceding the Vesting Date.

(b) "Retirement" shall mean termination of service on the Board at the Company's mandatory retirement age in accordance with the Company's director retirement policy or earlier on such terms and conditions as approved by the Committee.

3. Vesting.

(a) Vesting Criteria. The Grantee's interest in the Shares shall vest in full as of the earlier of (i) Grantee's Retirement or (ii) Grantee's death (as applicable, the "Vesting Date"). Prior to the Vesting Date, all Shares shall be unvested Shares.

(b) Restrictions. During the Restriction Period, the Grantee may not sell, transfer, pledge, exchange, hypothecate, or otherwise dispose of any unvested Shares or any right or interest related to such unvested Shares, other than as required by the Grantee's will or beneficiary designation, in accordance with the laws of descent and distribution or by a qualified domestic relations order.

(c) Cancellation Right. The Grantee must be in continuous service as a Director from the Award Date through the Vesting Date for an unvested Share to become vested. Subject to Section 4, Grantee's discontinuation of service as a Director prior to the Vesting Date shall cause the unvested Shares to be automatically forfeited as of such discontinuation of service date.

4. Change in Control. The restrictions set forth above in Section 3 shall lapse with respect to the unvested Shares not previously forfeited and such Shares shall become fully vested without regard to the limitations set forth in Section 3 above, provided that the Grantee has been in continuous service as a Director from the Award Date through the occurrence of a Change in Control (as defined in Exhibit A to this Agreement), unless either: (i) the Committee determines that the terms of the transaction giving rise to the Change in Control provide that the Award is to be replaced within a reasonable time after the Change in Control with an award of equivalent value of shares of the surviving parent corporation, or (ii) the Award is to be settled in cash in accordance with the last sentence of this Section 4. Upon a Change in Control, pursuant to Section 15 of the Plan, the Company may, in its discretion, settle the Award by a cash payment that the Committee shall determine in its sole discretion is equal to the fair market value of the Award on the date of such event.

5. Stockholder Rights. The Grantee shall have the right to vote the Shares. The Grantee shall also have the right to receive any cash dividends paid on the unvested Shares at the same time such amounts are paid with respect to all other shares of Common Stock; provided, the record date for such dividend payment is on or after the Award Date.

6. Capital Adjustments and Corporate Events. If, from time to time during the term of the Restriction Period, there is any capital adjustment affecting the outstanding Common Stock as a class without the Company's receipt of consideration, the Shares shall be adjusted in accordance with the provisions of Section 15 of the Plan. Any and all new, substituted or additional securities to which the Grantee may be entitled by reason of the Grantee's ownership of the Shares hereunder because of a capital adjustment shall be immediately subject to the restrictions set forth herein and included thereafter as Shares for purposes of this Agreement.

7. Refusal to Transfer. The Company shall not be required:

(a) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or the Plan; or

(b) to treat such purchaser or other transferee as owner of such Shares, accord such purchaser or other transferee the right to vote; or pay or deliver dividends or other distributions to such purchaser or other transferee with respect to such Shares.

8. Legends. If the Shares are certificated, the certificate or certificates evidencing the Shares, if any, issued hereunder shall be endorsed with the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS AND, ACCORDINGLY, MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED, OR IN ANY MANNER DISPOSED OF EXCEPT IN CONFORMITY WITH THE TERMS OF THAT CERTAIN RESTRICTED STOCK AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES. A COPY OF SUCH AGREEMENT IS MAINTAINED AT THE ISSUER'S PRINCIPAL CORPORATE OFFICES.

9. Tax Consequences. The Grantee has reviewed with the Grantee's own tax advisors the federal, state, and local tax consequences of this investment and the transactions contemplated by this Agreement. The Grantee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Grantee understands that the Grantee (and not the Company) shall be responsible for the Grantee's own tax liability that may arise as a result of the transactions contemplated by this Agreement. The Grantee understands that Section 83 of the Code taxes as ordinary income the difference between the purchase price, if any, for the Shares and the Fair Market Value of the Shares as of the date any restrictions on the Shares lapse. In this context, "restriction" means the restrictions imposed during the Restriction Period. The Grantee understands that the Grantee may elect to be taxed at the time the Shares are awarded rather than when and as the restrictions lapse by filing an election under Section 83(b) of the Code with the Internal Revenue Service within 30 days from the Award Date. THE GRANTEE ACKNOWLEDGES THAT IT IS THE GRANTEE'S SOLE RESPONSIBILITY (AND NOT THE COMPANY'S) TO FILE TIMELY THE ELECTION UNDER SECTION 83(B), EVEN IF THE GRANTEE REQUESTS THE COMPANY OR ITS REPRESENTATIVES TO MAKE THIS FILING ON THE GRANTEE'S BEHALF.

10. Entire Agreement; Governing Law. The Plan and this Agreement constitute the entire agreement of the Company and the Grantee (collectively, the "Parties") with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Parties with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Parties. Nothing in the Plan and this Agreement (except as expressly provided therein or herein) is intended to confer any rights or remedies on any person other than the Parties. The Plan and this Agreement are to be construed in accordance with and governed by the internal laws of the State of Texas, without giving effect to any choice-of-law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Texas to the rights and duties of the Parties. Should any provision of the Plan or this Agreement relating to the Shares be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

11. Interpretive Matters. Whenever required by the context, pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, or neuter, and the singular shall include the plural, and vice versa. The term "include" or "including" does not denote or imply any limitation. The term "business day" means any Monday through Friday other than such a day on which banks are authorized to be closed in the State of Texas. The captions and headings used in this Agreement are inserted for convenience and shall not be deemed a part of the Award or this Agreement for construction or interpretation.

12. Notice. Any notice or other communication required or permitted hereunder shall be given in writing and shall be deemed given, effective, and received upon prepaid delivery in person or by courier or upon the earlier of delivery or the third business day after deposit in the United States mail if sent by certified mail, with postage and fees prepaid, addressed to the other Party at its address as shown beneath its signature in this Agreement, or to such other address as such Party may designate in writing from time to time by notice to the other Party.

13. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Grantee, the Company and their respective permitted successors and assigns (including personal representatives, heirs and legatees), except that the Grantee may not assign any rights or obligations under this Agreement except to the extent and in the manner expressly permitted herein.

[Signature page follows]

EAGLE MATERIALS INC.

Dated: , 2014

By: _____
Name: Steven R. Rowley
Its: President and CEO
Address: 3811 Turtle Creek Boulevard, Suite 1100
Dallas, Texas 75219

The Grantee acknowledges receipt of a copy of the Plan, represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Award subject to all of the terms and provisions hereof and thereof. The Grantee has reviewed this Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement, and fully understands all provisions of this Agreement and the Plan. The Grantee further agrees to notify the Company upon any change in the address for notice indicated in this Agreement.

GRANTEE

Dated: , 2014

Signed: _____
Name: _____
Address: _____

EXHIBIT A

CHANGE IN CONTROL

For the purpose of this Agreement, a "Change in Control" shall mean the occurrence of any of the following events:

(a) The acquisition by any Person of beneficial ownership of securities of the Company (including any such acquisition of beneficial ownership deemed to have occurred pursuant to Rule 13d-5 under the Exchange Act) if, immediately thereafter, such Person is the beneficial owner of (i) 50% or more of the total number of outstanding shares of any single class of Company Common Stock or (ii) 40% or more of the total number of outstanding shares of all classes of Company Common Stock, unless such acquisition is made (a) directly from the Company in a transaction approved by a majority of the members of the Incumbent Board or (b) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company;

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or who is otherwise designated as a member of the Incumbent Board by such a vote) shall be considered as though such individual were a member of the Incumbent Board, except that any such individual shall not be considered a member of the Incumbent Board if his or her initial assumption of office occurs as a result of either an actual or threatened election contest (as such term is used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) The consummation of a Business Combination, unless, immediately following such Business Combination, (i) more than 50% of both the total number of then outstanding shares of common stock of the parent corporation resulting from such Business Combination and the combined voting power of the then outstanding voting securities of such parent corporation entitled to vote generally in the election of directors will be (or is) then beneficially owned, directly or indirectly, by all or substantially all of the Persons who were the beneficial owners, respectively, of the outstanding shares of Company Common Stock immediately prior to such Business Combination in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding shares of Company Common Stock, (ii) no Person (other than any employee benefit plan (or related trust) of the Company or any corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 40% or more of the total number of then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the parent corporation resulting from such Business Combination were members of the Incumbent Board immediately prior to the consummation of such Business Combination; or

(d) Approval by the Board and the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) a Major Asset Disposition (or, if there is no such approval by shareholders, consummation of such Major Asset Disposition) unless, immediately following such Major Asset Disposition, (A) Persons that were beneficial owners of the outstanding shares of Company Common Stock immediately prior to such Major Asset Disposition beneficially own, directly or indirectly, more than 50% of the total number of then outstanding shares of common stock and the combined voting power of the then outstanding shares of voting stock of the Company (if it continues to exist) and of the Acquiring Entity in substantially the same proportions as their ownership immediately prior to such Major Asset Disposition of the outstanding shares of Company Common Stock; (B) no Person (other than any employee benefit plan (or related trust) of the Company or such entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of common stock or the combined voting power of the then outstanding voting securities of the Company (if it continues to exist) and of the Acquiring Entity entitled to vote generally in the election of directors and (C) at least a majority of the members of the Board of the Company (if it continues to exist) and of the Acquiring Entity were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such Major Asset Disposition.

For purposes of the foregoing,

(i) the term "*Person*" means an individual, entity or group;

(ii) the term "*group*" is used as it is defined for purposes of Section 13(d)(3) of the Exchange Act;

(iii) the terms "*beneficial owner*", "*beneficial ownership*" and "*beneficially own*" are used as defined for purposes of Rule 13d-3 under the Exchange Act;

(iv) the term "*Business Combination*" means (x) a merger, consolidation or share exchange involving the Company or its stock or (y) an acquisition by the Company, directly or through one or more subsidiaries, of another entity or its stock or assets;

(v) the term "*Company Common Stock*" shall mean the Common Stock, par value $.01 per share, of the Company;

(vi) the term "*Exchange Act*" means the Securities Exchange Act of 1934, as amended;

(vii) the phrase "*parent corporation resulting from a Business Combination*" means the Company if its stock is not acquired or converted in the Business Combination and otherwise means the entity which as a result of such Business Combination owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries;

(viii) the term "*Major Asset Disposition*" means the sale or other disposition in one transaction or a series of related transactions of 50% or more of the assets of the Company and its subsidiaries on a consolidated basis; and any specified percentage or portion of the assets of the Company shall be based on fair market value, as determined by a majority of the members of the Incumbent Board;

(ix) the term "*Acquiring Entity*" means the entity that acquires the largest portion of the assets sold or otherwise disposed of in a Major Asset Disposition (or the entity, if any, that owns a majority of the outstanding voting stock of such acquiring entity entitled to vote generally in the election of directors or members of a comparable governing body); and

(x) the phrase "*substantially the same proportions*," when used with reference to ownership interests in the parent corporation resulting from a Business Combination or in an Acquiring Entity, means substantially in proportion to the number of shares of Company Common Stock beneficially owned by the applicable Persons immediately prior to the Business Combination or Major Asset Disposition, but is not to be construed in such a manner as to require that the same ratio or number of shares of such parent corporation or Acquiring Entity be issued, paid or delivered in exchange for or in respect of the shares of each class of Company Common Stock.

Exhibit 10.7

EXECUTION VERSION

J.P.Morgan

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

October 30, 2014

among

EAGLE MATERIALS INC.

The Lenders Party Hereto

JPMORGAN CHASE BANK, N.A.
as Administrative Agent

BANK OF AMERICA, N.A.,
BRANCH BANKING AND TRUST COMPANY and
WELLS FARGO BANK, N.A.
as Co-Syndication Agents

and

REGIONS BANK and SUNTRUST BANK
as Co-Documentation Agents

J.P. MORGAN SECURITIES LLC
as Sole Bookrunner and Sole Lead Arranger

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EXHIBITS:

This THIRD AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") dated as of October 30, 2014 among EAGLE MATERIALS INC., a Delaware corporation, the LENDERS from time to time party hereto, JPMORGAN CHASE BANK, N.A., as Administrative Agent, Issuing Bank and Swingline Lender, BANK OF AMERICA, N.A., BRANCH BANKING AND TRUST COMPANY and WELLS FARGO BANK, N.A., as Co-Syndication Agents and REGIONS BANK and SUNTRUST BANK, as Co-Documentation Agents.

R E C I T A L S

WHEREAS, the Borrower, the lenders identified therein and JPMorgan Chase Bank (now known as JPMorgan Chase Bank, N.A.), as administrative agent, previously entered that certain Credit Agreement dated as of December 18, 2003 (as amended by that certain First Amendment to Credit Agreement as of dated May 21, 2004, the "Original Agreement");

WHEREAS, the Borrower, the lenders identified therein and JPMorgan Chase Bank, N.A., as administrative agent, previously entered into that certain Amended and Restated Credit Agreement dated as of December 16, 2004 (as amended by that certain First Amendment to Amended and Restated Credit Agreement dated as of January 4, 2005, that certain Second Amendment to Amended and Restated Credit Agreement dated as of September 30, 2005, that certain Third Amendment to Amended and Restated Credit Agreement dated as of December 15, 2005, that certain Fourth Amendment to Amended and Restated Credit Agreement dated as of March 20, 2006, that certain Fifth Amendment to Amended and Restated Credit Agreement dated as of June 30, 2006, that certain Sixth Amendment to Amended and Restated Credit Agreement dated as of September 29, 2006 and that certain Seventh Amendment to Amended and Restated Credit Agreement dated as of August 31, 2007, the "Prior Agreement"); and

WHEREAS, the Borrower, the lenders identified therein and JPMorgan Chase Bank, N.A., as administrative agent, previously entered into that certain Second Amended and Restated Credit Agreement dated as of December 16, 2010 (as amended by that certain First Amendment to Second Amended and Restated Credit Agreement dated as of September 26, 2012, the "Existing Agreement");

NOW THEREFORE, the Borrower, the lenders party hereto and the Administrative Agent now desire to enter into this Agreement to amend and restate the Existing Agreement in its entirety and agree as follows:

ARTICLE I

Definitions

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR" when used in reference to any Loan or Borrowing, means that such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Adjusted Net Income" has the meaning assigned to such term in the definition of the term "Consolidated EBITDA".

"Administrative Agent" means JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Party" has the meaning assigned to such term in Section 9.01(d).

"Aggregate Commitment" means the aggregate of the Commitments of all of the Lenders, as reduced or increased from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Commitment is $500,000,000.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, *provided* that the Adjusted LIBO Rate for any day shall be based on the LIBO Rate at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Percentage" means, with respect to any Lender, the percentage of the Aggregate Commitment represented by such Lender's Commitment; *provided* that, in the case of Section 2.21 when a Defaulting Lender shall exist, "Applicable Percentage" shall mean the percentage of the Aggregate Commitment (disregarding any Defaulting Lender's Commitment) represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Applicable Rate" means, for any day, with respect to any Eurodollar Loan or any ABR Loan or with respect to the commitment fees payable under Section 2.12, as the case may be, the applicable rate per annum set forth below under the caption "Eurodollar Spread", "ABR Spread" or "Commitment Fee Rate", as the case may be, based upon the Leverage Ratio applicable on such date:

	Leverage Ratio:	Eurodollar Spread	ABR Spread	Commitment Fee Rate
Category 1:	< 1.00 to 1.00	1.00%	0.00%	0.10%
Category 2:	≥ 1.00 to 1.00 but < 1.50 to 1.00	1.250%	0.250%	0.15%
Category 3:	≥ 1.50 to 1.00 but < 2.00 to 1.00	1.50%	0.50%	0.20%
Category 4:	≥ 2.00 to 1.00 but < 2.50 to 1.00	1.75%	0.75%	0.25%
Category 5:	≥ 2.50 to 1.00 but < 3.00 to 1.00	2.00%	1.00%	0.30%
Category 6:	≥ 3.00 to 1.00	2.25%	1.25%	0.35%

For purposes of the foregoing,

(i) the Leverage Ratio shall be determined as of the end of each fiscal quarter of the Borrower's fiscal year based upon the Borrower's Financials, beginning with the fiscal quarter ended September 30, 2014;

(ii) at the option of the Administrative Agent or at the request of the Required Lenders, if at any time the Borrower fails to deliver the Financials on or before the date the Financials are due pursuant to Section 5.01, during the period from the expiration of the time for delivery thereof until such Financials are delivered, Category 6 shall be deemed applicable until such Financials are delivered, after which the Category shall be determined in accordance with the table above as applicable;

(iii) adjustments, if any, to the Category then in effect shall be effective commencing on and including the date of delivery to the Administrative Agent of the applicable Financials (it being understood and agreed that each change in Category shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change); and

(iv) notwithstanding the foregoing, Category 2 shall be deemed to be applicable until the Administrative Agent's receipt of the applicable Financials for the Borrower's first fiscal quarter ending after the Effective Date and adjustments to the Category then in effect shall thereafter be effected in accordance with the preceding paragraphs.

"Approved Fund" has the meaning assigned to such term in Section 9.04(b).

"Arranger" means J.P. Morgan Securities LLC in its capacity as Sole Lead Arranger.

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Attributable Receivables Indebtedness" at any time means the principal amount of Indebtedness which (i) if a Permitted Receivables Facility is structured as a lending agreement or other similar agreement, constitutes the principal amount of such Indebtedness or (ii) if a Permitted Receivables Facility is structured as a purchase agreement or other similar agreement, would be outstanding at such time under the Permitted Receivables Facility if the same were structured as a lending agreement rather than a purchase agreement or such other similar agreement (whether such amount is described as "capital" or otherwise).

"Augmenting Lender" has the meaning assigned to such term in Section 2.20.

"Augmenting Lender Supplement" has the meaning assigned to such term in Section 2.20.

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, *provided* that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" means Eagle Materials Inc., a Delaware corporation.

"Borrowing" means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect or (b) a Swingline Loan.

"Borrowing Request" means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03 and, if in writing, in substantially the form attached hereto as Exhibit F-1.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that, when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollars in the London interbank market.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital lease obligations on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof), of Equity Interests representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated.

"Change in Law" means the occurrence, after the date of this Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; *provided however*, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law" regardless of the date enacted, adopted, issued or implemented.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Co-Documentation Agent" means each of Regions Bank and SunTrust Bank in its capacity as co-documentation agent for the credit facility evidenced by this Agreement.

"Co-Syndication Agent" means each of Bank of America, N.A., Branch Banking and Trust Company and Wells Fargo Bank, N.A. in its capacity as syndication agent for the credit facility evidenced by this Agreement.

"Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (a) reduced or terminated from time to time pursuant to Section 2.09, (b) increased from time to time pursuant to Section 2.20 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption or other documentation contemplated hereby pursuant to which such Lender shall have assumed its Commitment, as applicable.

"Communications" has the meaning assigned to such term in Section 9.01(d).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated EBITDA" means, for any period with respect to the Borrower and its Restricted Subsidiaries on a consolidated basis, Consolidated Net Income *plus* the income of any Unrestricted Subsidiary to the extent actually received in cash by the Borrower or a Restricted Subsidiary in the form of dividends or similar distributions during such period (such sum, herein the "Adjusted Net Income");

(a) *plus*, without duplication and to the extent deducted from revenues in determining Adjusted Net Income, the sum of: (i) its Consolidated Interest Expense, (ii) expense for income taxes paid or accrued, (iii) depletion, (iv) depreciation, (v) amortization, (vi) non-cash items, (vii) all fees and expenses directly incurred in connection with any equity offering, investment, acquisition, disposition, recapitalization or incurrence of indebtedness, in each case regardless of whether such transaction is successfully consummated (including, without limitation, fees and expenses of any counsel, appraisers, consultants and other advisors, any financing fees, due diligence fees or any other fees and expenses in connection therewith), (viii) extraordinary, unusual or nonrecurring losses and (ix) the amount of cost savings, operating expense reductions, other operating improvements and initiatives and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken in connection with a Material Acquisition, other operating improvements and synergies and changes in allocated overhead shall be calculated on a pro forma basis, *provided* that (A) such cost savings, operating expense reductions, other operating improvements and initiatives and synergies are reasonably identifiable and factually supportable on a basis reasonably acceptable to the Administrative Agent; and (B) for any period of calculation, the aggregate amount added in determining Consolidated EBITDA under the terms of this clause (ix) for such period shall not exceed an amount equal to the greater of (1) 15% of the total Consolidated EBITDA for such period and (2) $50,000,000 (or such greater amount approved by the Administrative Agent in its sole discretion);

(b) *minus*, without duplication and to the extent included in Consolidated Net Income, extraordinary, unusual or non-recurring income or gains realized other than in the ordinary course of business, all of the above calculated for the Borrower and its Restricted Subsidiaries in accordance with GAAP on a consolidated basis.

For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each such period, a "Reference Period"), (i) if at any time during such Reference Period the Borrower or any Restricted Subsidiary shall have made any Material Disposition or converted any Restricted Subsidiary to an Unrestricted Subsidiary, the Consolidated EBITDA for such Reference Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition, or attributable to the converted Unrestricted Subsidiary, respectively, for such Reference Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Reference Period, and (ii) if during such Reference Period the Borrower or any Restricted Subsidiary shall have made a Material Acquisition or converted any Unrestricted Subsidiary to a Restricted Subsidiary, Consolidated EBITDA for such Reference Period shall be calculated after giving effect thereto on a pro forma basis. As used in this definition, "Material Acquisition" means any acquisition of property or series of related acquisitions of property that involves the payment of consideration by the Borrower and its Restricted Subsidiaries in excess of $10,000,000; and "Material Disposition" means any sale, transfer or disposition of property or series of related sales, transfers, or dispositions of property that yields gross proceeds to the Borrower or any of its Restricted Subsidiaries in excess of $10,000,000.

"Consolidated Interest Expense" means, with reference to any period, the interest expense and preferred stock dividends (including without limitation interest expense under Capital Lease Obligations that is treated as interest in accordance with GAAP) of the Borrower and its Restricted Subsidiaries calculated on a consolidated basis for such period with respect to (a) all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries allocable to such period in accordance with GAAP (including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers acceptance financing and net costs under interest rate Swap Agreements to the extent such net costs are allocable to such period in accordance with GAAP) and (b) the interest, yield or discount, as applicable, component of all Attributable Receivables Indebtedness of the Borrower and its Restricted Subsidiaries for such period. In the event that the Borrower or any Restricted Subsidiary shall have completed a Material Acquisition or a Material Disposition since the beginning of the relevant period, Consolidated Interest Expense shall be determined for such period on a pro forma basis (including giving effect to any related incurrence or repayment of Indebtedness).

"Consolidated Net Income" means, with reference to any period, the net income (or loss) of the Borrower and its Restricted Subsidiaries calculated in accordance with GAAP on a consolidated basis (without duplication) for such period; *provided* that there shall be excluded any income (or loss) of any Person other than the Borrower or a Restricted Subsidiary, but any such income so excluded may be included in such period or any later period to the extent of any cash dividends or distributions actually paid in the relevant period to the Borrower or any wholly-owned Restricted Subsidiary of the Borrower.

"Consolidated Net Worth" means, as of any date of determination, the consolidated stockholders' equity of the Borrower and the Restricted Subsidiaries calculated on a consolidated basis on such date.

"Consolidated Tangible Net Worth" means, as of any date of determination, the Consolidated Net Worth, minus any intangible assets, including, without limitation, patents, patent rights, trademarks, trade names, franchises, copyrights, goodwill, and other similar intangible assets of the Borrower and the Restricted Subsidiaries calculated on a consolidated basis as of such date; *provided*, *however*, that there shall be excluded from the calculation of "Consolidated Tangible Net Worth" any effects resulting from any mark-to-market adjustments made directly to Consolidated Net Worth as a result of fluctuations in the value of financial instruments owned by the Borrower or any of the Restricted Subsidiaries as mandated under Financial Accounting Standards Board Statement 133.

"Consolidated Total Assets" means, as of any date of determination, total assets of the Borrower and its Restricted Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

"Consolidated Total Indebtedness" means, as of any date of determination, the sum, without duplication, of the aggregate Indebtedness of the Borrower and its Restricted Subsidiaries calculated on a consolidated basis as of such date in accordance with GAAP, but excluding (i) any Indebtedness under Swap Agreements that is not then due and (ii) any Indebtedness of the types described in clause (i) in the definition of "Indebtedness" (and, in each case, all Guarantees in respect thereof).

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms "Controlling" and "Controlled" have meanings correlative thereto.

"Credit Party" means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Borrower or a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Borrower's or such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of a Bankruptcy Event.

"Dollars" or "$" refers to lawful money of the United States of America.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent, any of its Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or

the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition upon the Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Eurodollar" when used in reference to any Loan or Borrowing, means that such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Article VII.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f) and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"Existing Agreement" has the meaning set forth in the introduction to this Agreement.

"Existing Letters of Credit" shall mean the letters of credit which are "Letters of Credit" under the Existing Agreement, which are outstanding on the Effective Date and are listed on Schedule 1.01(a) hereto.

"Facility Termination" has the meaning set forth in Section 9.14(c).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreement between the United States of America and another country to implement such sections of the Code.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it; *provided*, that, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

"Financials" means the annual or quarterly financial statements, and accompanying certificates and other documents, of the Borrower and its Subsidiaries required to be delivered pursuant to Section 5.01(a) or 5.01(b).

"Foreign Restricted Subsidiary" means any Restricted Subsidiary organized under the laws of any country or jurisdiction other than the United States of America, any state or commonwealth thereof or the District of Columbia.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; *provided*, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hostile Acquisition" means (a) the acquisition of the Equity Interests of a Person through a tender offer or similar solicitation of the owners of such Equity Interests which has not been approved (prior to such acquisition) by the board of directors (or any other applicable governing body) of such Person or by similar action if such Person is not a corporation and (b) any such acquisition as to which such approval has been withdrawn.

"Impacted Interest Period" has the meaning assigned to such term in the definition of "LIBO Rate".

"Increasing Lender" has the meaning assigned to such term in Section 2.20.

"Increasing Lender Supplement" has the meaning assigned to such term in Section 2.20.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) intercompany expenses and charges among such Person and its subsidiaries and (ii) accounts payable, in each case, incurred in the ordinary course of business), (e) all net obligations of such Person under Swap Agreements (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, but only to the extent of such property's fair market value, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person and (i) all obligations, contingent or otherwise, of such Person as an account party in respect of standby letters of credit and letters of guaranty and in respect of bankers' acceptances (excluding letters of credit, letters of guaranty and bankers' acceptances relating to trade accounts payable arising in the ordinary course of business). The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For purposes of determining Indebtedness, the "principal amount" of the obligations of such Person or any of its subsidiaries in respect of any Swap Agreement at such time shall be the Swap Termination Value. Notwithstanding the foregoing, any Indebtedness that has been defeased in accordance with GAAP or defeased pursuant to the deposit of cash or Permitted Investments (in an amount sufficient to satisfy all such obligations relating to such Indebtedness at maturity or redemption, as applicable, and all payments of interest and premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such Indebtedness, and subject to no other Liens, and the other applicable terms of the instrument governing such Indebtedness, shall not constitute or be deemed "Indebtedness"; provided that such defeasance has been made in a manner not prohibited by this Agreement.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a) hereof, Other Taxes.

"Ineligible Institution" has the meaning assigned to such term in Section 9.04(b).

"Interest Coverage Ratio" has the meaning assigned to such term in Section 6.11(b).

"Interest Election Request" means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08 and, if in writing, in the form attached hereto as Exhibit F-2.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December and the Maturity Date, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and the Maturity Date and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid and the Maturity Date.

"Interest Period" means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one week or one, two, three or six months thereafter, as the Borrower may elect; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interpolated Rate" means, at any time, for any Impacted Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBOR Screen Rate for the longest period (for which the LIBOR Screen Rate is available for the applicable currency) that is shorter than the Impacted Interest Period and (b) the LIBOR Screen Rate for the shortest period (for which the LIBOR Screen Rate is available for the applicable currency) that exceeds the Impacted Interest Period, in each case, at such time.

"Investment" has the meaning set forth in Section 6.04.

"IRS" means the United States Internal Revenue Service.

"Issuing Bank" means JPMorgan Chase Bank, N.A., in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.06(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"Joint Venture" means (i) Texas–Lehigh Cement Company, L.P. and (ii) any joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form, that is not a Subsidiary.

"LC Collateral Account" has the meaning assigned to such term in Section 2.06(j).

"LC Disbursement" means a payment made by the Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

"Lender Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lender Presentation" means the Lender Presentation dated October 2014 relating to the Borrower and the Transactions.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a Lender hereunder pursuant to Section 2.20 or pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender and the Issuing Bank.

"Letter of Credit" means any letter of credit issued pursuant to this Agreement and any Existing Letter of Credit.

"Leverage Ratio" has the meaning assigned to such term in Section 6.11(a).

"LIBO Rate" means, with respect to any Eurodollar Borrowing for any applicable Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen or, in the event such rate does not appear on either of such Reuters pages, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion (in each case the "LIBOR Screen Rate") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; *provided* that, if the LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; *provided*, *further*, that if a LIBOR Screen Rate shall not be available at such time for such Interest Period (the "Impacted Interest Period"), then the LIBO Rate for such Interest Period shall be the Interpolated Rate; *provided*, that, if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. It is understood and agreed that all of the terms and conditions of this definition of "LIBO Rate" shall be subject to Section 2.14.

"LIBOR Screen Rate" has the meaning assigned to such term in the definition of "LIBO Rate".

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means this Agreement, any promissory notes issued pursuant to Section 2.10(e), any Letter of Credit applications, the Subsidiary Guaranty (and any joinder to the Subsidiary Guaranty) and all other documentation now or hereafter executed and delivered by the Borrower or any Subsidiary Guarantor in connection with this Agreement.

"Loan Parties" means, collectively, the Borrower and the Subsidiary Guarantors.

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"Material Acquisition" has the meaning set forth in the definition of the term "Consolidated EBITDA."

"Material Adverse Effect" means any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on (a) the business, property, financial condition or results of operation of the Borrower and the Restricted Subsidiaries taken as a whole; (b) the ability of the Borrower and the Restricted Subsidiaries (taken as a whole) to perform their respective obligations under the Loan Documents; or (c) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Administrative Agent and the Lenders thereunder.

"Material Disposition" has the meaning set forth in the definition of the term "Consolidated EBITDA."

"Material Indebtedness" means Indebtedness (other than the Obligations and any obligations under any Swap Agreement) of any one or more of the Borrower and its Restricted Subsidiaries in an aggregate principal amount exceeding $10,000,000.

"Material Subsidiary" means, as at any time of determination, each Restricted Subsidiary organized under the laws of the United States of America, any state or commonwealth thereof or the District of Columbia (other than any Receivables Entity) (i) which, as of the end of the most recent fiscal quarter of the Borrower for which Financials have been delivered (or, if prior to the date of the delivery of the first Financials, the most recent financial statements referred to in Section 3.04(a)), contributed greater than fifteen percent (15%) of Consolidated EBITDA for the period of four consecutive fiscal quarters then ended or (ii) which contributed greater than fifteen percent (15%) of Consolidated Total Assets as of such date.

"Maturity Date" means October 30, 2019.

"Moody's" means Moody's Investors Service, Inc.

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

"New Material Subsidiary" has the meaning assigned to such term in Section 5.09(a).

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(d).

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and Indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding, but excluding any Indebtedness referenced in clause (e) of the definition thereof), obligations and liabilities of any of the Borrower and its Restricted Subsidiaries to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of Treasury.

"Original Agreement" has the meaning set forth in the introduction to this Agreement.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

"Participant" has the meaning assigned to such term in Section 9.04(c).

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Acquisition" means any acquisition of property (excluding any Hostile Acquisition) if, at the time of and immediately after giving effect thereto, (a) no Default has occurred and is continuing or would arise after giving effect thereto, (b) the Person or division or line of business subject to such acquisition is engaged in the same or a similar line of business as the Borrower and the Restricted Subsidiaries or business reasonably related, incidental or ancillary thereto or that is a reasonable extension thereof, (c) all actions required to be taken (if any) under Section 5.09 or Section 5.10, as the case may be, with respect to such Person or property being acquired shall have been taken, (d) the Borrower and the Restricted Subsidiaries are in compliance, on a pro forma basis after giving effect to such acquisition (and any related incurrence or repayment of Indebtedness, with any new Indebtedness being deemed to be amortized over the applicable testing period in accordance with its terms), with the covenants contained in Section 6.11 and (e) in the case of an acquisition, merger or consolidation involving the Borrower or a Restricted Subsidiary, the Borrower or such Restricted Subsidiary is the surviving entity of such merger and/or consolidation.

"Permitted Encumbrances" means:

(a) Liens for Taxes, assessments and other governmental charges that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) Liens or deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Section 7.01; and

(f) easements, zoning restrictions, rights-of-way, survey exceptions and similar encumbrances on real property imposed by law or arising in the ordinary course of business, or Liens incidental to the conduct of the business or to the ownership of properties or other covenants, conditions, restrictions and minor defects or irregularities in title, in each case that do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or its Restricted Subsidiaries taken as a whole;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness for borrowed money.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000;

(f) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the forgoing) representing the noncash portion of the sales price of any assets disposed of as permitted by Section 6.03(c)(xii); *provided* that the related disposition was consummated in accordance with the limitations in Section 6.03; and

(g) any Equity Interest, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the forgoing) received in connection the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business.

"Permitted Receivables Facility" shall mean a receivables facility or facilities created under the Permitted Receivables Facility Documents, providing for the sale, transfer and/or pledge by the Borrower and/or one or more other Receivables Sellers of Permitted Receivables Facility Assets (thereby providing financing to the Borrower and the Receivables Sellers) to a Receivables Entity (either directly or through another Receivables Seller), which in turn shall sell, transfer and/or pledge interests in the respective Permitted Receivables Facility Assets to third-party lenders or investors pursuant to the Permitted Receivables Facility Documents (with the Receivables Entity permitted to issue or convey purchaser interests, investor certificates, purchased interest certificates or other similar documentation evidencing interests in the Permitted Receivables Facility Assets) in return for the cash used by such Receivables Entity to acquire the Permitted Receivables Facility Assets from the Borrower and/or the respective Receivables Sellers, in each case as more fully set forth in the Permitted Receivables Facility Documents.

"Permitted Receivables Facility Assets" shall mean Receivables (whether now existing or arising in the future) of the Borrower and the Subsidiaries which are transferred, sold and/or pledged to a Receivables Entity pursuant to a Permitted Receivables Facility and any related Permitted Receivables Related Assets which are also so transferred, sold and/or pledged to the Receivables Entity and all proceeds thereof.

"Permitted Receivables Facility Documents" shall mean each of the documents and agreements entered into in connection with any Permitted Receivables Facility, including all documents and agreements relating to the issuance, funding and/or purchase of certificates and purchased interests or the incurrence of loans, as applicable, all of which documents and agreements shall be in form and substance reasonably satisfactory to the Administrative Agent, in each case as such documents and agreements may be amended, modified, supplemented, refinanced or replaced from time to time so long as (i) any such amendments, modifications, supplements, refinancings or replacements do not impose any conditions or requirements on the Borrower or any Subsidiary that are more restrictive in any material respect than those in existence immediately prior to any such amendment, modification, supplement, refinancing or replacement unless otherwise consented to by the Administrative Agent, (ii) any such amendments, modifications, supplements, refinancings or replacements are not adverse in any material respect to the interests of the Lenders unless otherwise consented to by the Administrative Agent and (iii) any such amendments, modifications, supplements, refinancings or replacements are otherwise in form and substance reasonably satisfactory to the Administrative Agent.

"Permitted Receivables Related Assets" means any assets that are customarily sold, transferred and/or pledged or in respect of which security interests are customarily granted in connection with asset securitization transactions involving receivables similar to Receivables and any collections or proceeds of any of the foregoing (including, without limitation, lock-boxes, deposit accounts, records in respect of Receivables and collections in respect of Receivables).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform" means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"Prior Agreement" has the meaning set forth in the introduction to this Agreement.

"Receivables" shall mean any right to payment created by or arising from sales of goods, leases of goods or the rendition of services rendered no matter how evidenced whether or not earned by performance (whether constituting accounts, general intangibles, chattel paper or otherwise).

"Receivables Entity" shall mean a wholly-owned Subsidiary which engages in no activities other than in connection with the financing of accounts receivable of the Receivables Sellers and which is designated (as provided below) as a "Receivables Entity" (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Borrower or any Restricted Subsidiary, (ii) is recourse to or obligates the Borrower or any Restricted Subsidiary in any way (other than pursuant to Standard Securitization Undertakings) or (iii) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings, (b) with which neither the Borrower nor any Restricted Subsidiary has any contract, agreement, arrangement or understanding (other than pursuant to the Permitted Receivables Facility Documents (including with respect to fees payable in the ordinary course of business in connection with the servicing of accounts receivable and related assets)) on terms less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from persons that are not Affiliates of the Borrower, and (c) to which neither the Borrower nor any Restricted Subsidiary has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results (other than pursuant to Standard Securitization Undertakings). Any such designation shall be evidenced to the Administrative Agent by filing with the Administrative Agent an officer's certificate of the Borrower certifying that, to the best of such officer's knowledge and belief after consultation with counsel, such designation complied with the foregoing conditions.

"Receivables Sellers" shall mean the Borrower and those Subsidiaries that are from time to time party to the Permitted Receivables Facility Documents (other than any Receivables Entity).

"Recipient" means (a) the Administrative Agent, (b) any Lender and (c) the Issuing Bank, as applicable.

"Register" has the meaning assigned to such term in Section 9.04(b).

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, advisors and representatives of such Person and such Person's Affiliates.

"Required Lenders" means, subject to Section 2.21, at any time, Lenders having Revolving Credit Exposures and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposures and unused Commitments at such time.

"Responsible Officer" means, with respect to any Person, the chief executive officer, president, any executive vice president, any senior vice president, the chief financial officer or treasurer of such Person (or, if such Person is a limited partnership, any of the foregoing of its general partner).

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property but not including any payment to the extent settled by the issuance of Equity Interests of the Borrower), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any Restricted Subsidiary or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any Restricted Subsidiary (including any payment in respect of Equity Interests under a Swap Agreement but not including any payment under a Swap Agreement to the extent paid or settled by the issuance of Equity Interests of the Borrower).

"Restricted Subsidiary" means any Subsidiary that is not an Unrestricted Subsidiary.

"Revolving Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans, its LC Exposure and its Swingline Exposure at such time.

"Revolving Loan" means a Loan made pursuant to Section 2.01.

"S&P" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Sanctioned Country" means, at any time, a country or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty's Treasury of the United Kingdom.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933.

"Senior Notes" means the following outstanding Senior Notes issued by the Borrower pursuant to that certain Note Purchase Agreement dated as of November 15, 2005 and that certain Note Purchase Agreement dated as of October 2, 2007, as applicable:

(a) 5.38% Series 2005A Senior Notes, Tranche B due November 15, 2015;

(b) 5.48% Series 2005A Senior Notes, Tranche C due November 15, 2017;

(c) 6.27% Series 2007A Senior Notes, Tranche B due October 2, 2016;

(d) 6.36% Series 2007A Senior Notes, Tranche C due October 2, 2017; and

(e) 6.48% Series 2007A Senior Notes, Tranche D due October 2, 2019.

"Specified Acquisition" means the acquisition contemplated by that certain Securities Purchase Agreement dated as of October 16, 2014, by and among CRS Holdco LLC, the sellers named therein, CRS Seller Representative, LLC, as seller representative, and Northern White Sand LLC, as the purchaser.

"Standard Securitization Undertakings" shall mean representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary thereof in connection with the Permitted Receivables Facility which are reasonably customary in an accounts receivable financing transaction.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D of the Board. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D of the Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" means any Indebtedness of the Borrower or any Restricted Subsidiary the payment of which is contractually subordinated to payment of the Obligations.

"Subordinated Indebtedness Documents" means any document, agreement or instrument evidencing any Subordinated Indebtedness or entered into in connection with any Subordinated Indebtedness.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Borrower.

"Subsidiary Guarantor" means, at any time, any Restricted Subsidiary of the Borrower that is a party to the Subsidiary Guaranty at such time. The Subsidiary Guarantors on the Effective Date are identified as such in Schedule 3.01 hereto.

"Subsidiary Guaranty" means that certain Guaranty dated as of the Effective Date in the form of Exhibit D (including any and all supplements thereto) and executed by each Subsidiary Guarantor.

"Successor Company" has the meaning set forth in Section 6.03(a)(vii).

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means JPMorgan Chase Bank, N.A., in its capacity as lender of Swingline Loans hereunder.

"Swingline Loan" means a Loan made pursuant to Section 2.05.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Transactions" means the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof, the execution, delivery and performance by each Subsidiary Guarantor of the Subsidiary Guaranty and the issuance of Letters of Credit hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"Unrestricted Subsidiary" means (a) as of the Effective Date, each of the Subsidiaries identified on Schedule 3.01 hereto as such; *provided*, that such Subsidiaries may, after the Effective Date, be re-designated as Restricted Subsidiaries pursuant to the terms of Section 5.11, (b) any Subsidiary that has been designated by a Financial Officer of the Borrower as an Unrestricted Subsidiary pursuant to Section 5.11 subsequent to the Effective Date (and, in the case of clauses (a) and (b), not subsequently designated as a Restricted Subsidiary in accordance with such Section) and (c) any subsidiary of an Unrestricted Subsidiary.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "Revolving Loan") or by Type (*e.g.*, a "Eurodollar Loan") or by Class and Type (*e.g.*, a "Eurodollar Revolving Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "Revolving Borrowing") or by Type (*e.g.*, a "Eurodollar Borrowing") or by Class and Type (*e.g.*, a "Eurodollar Revolving Borrowing").

SECTION 1.03 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". The word "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) 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 hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (f) 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.

SECTION 1.04 Accounting Terms; GAAP; Treatment of Unrestricted Subsidiaries; Pro Forma Calculations. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, for purposes of calculations made pursuant to the terms of this Agreement or any other Loan Document, GAAP will be deemed to treat leases that would have been classified as operating leases in accordance with GAAP as in effect on the Effective Date in a manner consistent with the treatment of such leases under GAAP as in effect on the Effective Date, notwithstanding any modifications or interpretive changes to GAAP that may occur thereafter.

(b) Except as otherwise agreed, all accounting and financial calculations and determinations shall be made without consolidating the accounts of Unrestricted Subsidiaries with those of the Borrower or any Restricted Subsidiary, notwithstanding that such treatment is inconsistent with GAAP.

(c) All pro forma computations required to be made hereunder giving effect to any acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence or assumption of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive fiscal quarters ending with the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, ending with the last fiscal quarter included in the financial statements referred to in Section 3.04(a)), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of and any related incurrence or reduction of Indebtedness. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement applicable to such Indebtedness).

SECTION 1.05 Status of Obligations. In the event that the Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, the Borrower shall take or cause such other Loan Party to take all such actions (if any) as shall be reasonably necessary to cause the Obligations to constitute "senior indebtedness" (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available to holders of such "senior indebtedness" under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any Subordinated Indebtedness Document and are further given all such other designations as shall be required under the terms of such Subordinated Indebtedness Document such that the Administrative Agent and the Lenders may have and exercise any payment blockage or other remedies available to holders of "senior indebtedness" under the terms of such Subordinated Indebtedness Document.

ARTICLE II

The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender (severally and not jointly) agrees to make Revolving Loans to the Borrower in Dollars from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the sum of the total Revolving Credit Exposures exceeding the Aggregate Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02 Loans and Borrowings. (a) Each Revolving Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.05.

(b) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $500,000 and not less than $1,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $1,000,000; *provided* that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Aggregate Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of $100,000 and not less than $1,000,000. Borrowings of more than one Type and Class may be outstanding at the same time; *provided* that there shall not at any time be more than a total of six (6) Eurodollar Revolving Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03 Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone or by delivering a written Borrowing Request signed by the Borrower (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, one (1) Business Day before the date of the proposed Borrowing; *provided* that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(d) may be given not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing. Such Borrowing Request shall be irrevocable and, if made by telephone, shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate principal amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the account(s) to which funds are to be disbursed.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Intentionally Omitted.

SECTION 2.05 Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans in Dollars to the Borrower from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $25,000,000 or (ii) the sum of the total Revolving Credit Exposures exceeding the Aggregate Commitment; *provided* that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 1:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the general deposit account of the Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to the Issuing Bank) by 4:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts

received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

SECTION 2.06 Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit denominated in Dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit, the proceeds of which would be made available by the Borrower or any of its Subsidiaries to any Person (i) for the purpose of funding any activity or business of or with any Sanctioned Person, or in any Sanctioned Country, in violation of applicable Sanctions or (ii) in any other manner that would result in a violation of applicable Sanctions by any party to this Agreement. The Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this paragraph, the Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(b) to the same extent as if it were the sole account party in respect of such Letter of Credit (the Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such a Subsidiary that is an account party in respect of any such Letter of Credit).

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions; Auto-Extension Letters of Credit.

(i) To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit, *provided* that no provision in such application shall be deemed effective to the extent such provision contains, provides for, or requires, representations, warranties, covenants, security interests, Liens, indemnities, reimbursements of costs or expenses, events of default, remedies, or standards of care or to the extent such provision conflicts or is inconsistent with this Agreement. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the amount of the LC Exposure shall not exceed $50,000,000 and (ii) the sum of the total Revolving Credit Exposures shall not exceed the Aggregate Commitment.

(ii) If the Borrower so requests in any applicable notice requesting the issuance of a Letter of Credit, the Issuing Bank may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); *provided* that any such Auto-Extension Letter of Credit must permit the Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the Borrower shall not be required to make a specific request to the Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date in compliance with paragraph (c) of this Section; *provided*, *however*, that the Issuing Bank shall not permit any such extension if (A) the Issuing Bank has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of this Section 2.06 or otherwise), or (B) it has received notice on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the Issuing Bank not to permit such extension.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is six months after the Maturity Date; *provided however*, that with respect to each Letter of Credit with an expiry date beyond the Maturity Date, the Borrower shall pledge to the Administrative Agent cash collateral in the amount, at the time and in the manner provided for in Section 2.06(j).

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent in Dollars the amount equal to such LC Disbursement not later than (i) 1:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or (ii) if such notice has not been received by the Borrower prior to such time on such date, then not later than 1:00 p.m., New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, if such LC Disbursement is not less than $1,000,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in a principal amount equal to the amount of such LC Disbursement and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting

the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; *provided* that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposures representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders (the "LC Collateral Account"), an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. If the Borrower is required to deposit cash collateral pursuant to Section 2.11 because the Revolving Credit Exposures exceed the total Commitments, the Borrower shall deposit cash collateral in the LC Collateral Account in an aggregate amount equal to such excess plus any accrued and unpaid interest thereon. If the Borrower is required to pledge cash collateral pursuant to clause (c) of this Section, then on or before the date that is 90 days prior to the Maturity Date, the Borrower shall deposit in the LC Collateral Account an amount in cash equal to the aggregate LC Exposure for all Letters of Credit that have expiry dates past the Maturity Date plus any accrued and unpaid interest thereon. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived. If the Borrower is required to provide an amount of cash collateral hereunder to secure Letters of Credit with expiry dates beyond the Maturity Date, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after the Letter of Credit with the latest expiry date has expired if as of such date no further Letters of Credit are outstanding and all LC Disbursements have been reimbursed. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the fact that the Revolving Credit Exposure exceeds the total Commitments, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after the date when the Revolving Credit Exposures no longer exceed the total Commitments.

SECTION 2.07 Funding of Borrowings. Each Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders, it being understood that Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Revolving Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account designated by the Borrower in the applicable Borrowing Request; *provided* that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Section 2.07 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to such Borrowing. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

SECTION 2.08 Interest Elections. (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Revolving Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Revolving Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Borrowings of Swingline Loans, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone or by delivering a written Interest Election Request signed by the Borrower by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Borrowing Request shall be irrevocable and, any if made by telephone, shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request signed by the Borrower. Notwithstanding any contrary provision herein, this Section shall not be construed to permit the Borrower to elect an Interest Period for Eurodollar Loans that does not comply with Section 2.02(d).

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which Interest Period shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Revolving Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Revolving Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09 Termination and Reduction of Commitments. (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; *provided* that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of $5,000,000 and not less than $5,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the sum of the Revolving Credit Exposures would exceed the Aggregate Commitment.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or other transactions specified therein, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.10 Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or the last day of a calendar month and is at least two (2) Business Days after such Swingline Loan is made; *provided* that on each date that a Revolving Borrowing is made, the Borrower shall repay all Swingline Loans then outstanding.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the Obligations.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in substantially the form attached hereto as Exhibit G. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.11 Prepayment of Loans. The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with the provisions of this Section 2.11. Each optional prepayment of the Loans shall be in an amount that is an integral multiple of $100,000 and not less than $1,000,000. The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by written notice (promptly followed by telephonic confirmation of such request) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Revolving Borrowing, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 1:00 p.m., New York City time, one (1) Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16. If at any time the sum of the aggregate principal amount of all of the Revolving Credit Exposures exceeds the Aggregate Commitment, the Borrower shall promptly (and, in any event, within one (1) Business Day), upon notice of such excess being given to the Borrower by the Administrative Agent, repay Borrowings (and the Borrower shall not be required to comply with the notice requirements set forth in this Section 2.11 with respect to any such repayment) and/or cash collateralize LC Exposure pursuant to Section 2.06(j), as applicable, in an aggregate principal amount sufficient to eliminate such excess.

SECTION 2.12 Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the daily amount of the unused Commitment of such Lender during the Availability Period. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the Effective Date. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, a Commitment of a Lender shall be deemed to be used to the extent of the outstanding Loans and LC Exposure of such Lender (and the Swingline Exposure of such Lender shall be disregarded for such purpose).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to such Lender's participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to the Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to Letters of Credit issued by the Issuing Bank during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees and commissions with respect to the issuance, amendment, cancellation, negotiation, **t**ransfer, presentment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third (3rd) Business Day following such last day, commencing on the first such date to occur after the Effective Date; *provided* that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand therefor (or such longer period of time as the Issuing Bank may agree to in its sole discretion). All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13 Interest. (a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; *provided* that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and any such Eurodollar Borrowing shall be repaid on the last day of the then current Interest Period applicable thereto and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.15 Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan or of maintaining its obligation to make any such Loan or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder, whether of principal, interest or otherwise, then the Borrower will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth in reasonable detail the basis for, the calculation of and the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Illegality. If, on or after the Effective Date, any Change in Law shall make it unlawful or impossible for any Lender (or its applicable lending office) to make, maintain or fund its Eurodollar Loans and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Eurodollar Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended. Before giving any notice to the Administrative Agent pursuant to this Section 2.15(e), such Lender shall designate a different lending office if such designation will avoid the need for giving such notice and will not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. If such notice is given, each Eurodollar Loan of such Lender then outstanding shall be converted to an ABR Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan, if such Lender may lawfully continue to maintain and fund such Loan as a Eurodollar Loan to such day, or (ii) immediately, if such Lender shall determine that it may not lawfully continue to maintain and fund such Loan as a Eurodollar Loan to such day. Interest and principal on any such ABR Loan shall be payable on the same dates as, and on a pro rata basis with, the interest and principal payable on the related Eurodollar Loans of the other Lenders.

SECTION 2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 and is revoked in accordance therewith) or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender (other than, in the case of a claim for compensation based on the failure to borrow as specified in clause (c) above, any Lender whose failure to make a Loan required to be made by it hereunder has resulted in such failure to borrow) for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth in reasonable detail the basis for and any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17 Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. The Loan Parties shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (1) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Defined Terms. For purposes of this Section 2.17, the term "Lender" includes the Issuing Bank and the term "applicable law" includes FATCA.

(j) Certain FATCA Matters. For purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of the Agreement, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans and Commitments as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.471-2(b)(2)(i).

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 1:00 p.m., New York City time on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois 60603, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it and any payments received under the terms of the Subsidiary Guaranty for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of the Borrower maintained with the Administrative Agent. The Borrower hereby irrevocably authorizes (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Swingline Loans) and that all such Borrowings shall be deemed to have been requested pursuant to Sections 2.03 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of the Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents. The Administrative Agent shall promptly (and, in any event, within one (1) Business Day) notify the Borrower of any action taken by the Administrative Agent under this clause (c).

(d) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements and Swingline Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07, 2.18(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent, the Swingline Lender or the Issuing Bank to satisfy such Lender's obligations to it under such Section until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account over which the Administrative Agent shall have exclusive control as cash collateral for, and application to, any future funding obligations of such Lender under any such Section; in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(a) If (i) any Lender requests compensation under Section 2.15, (ii) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or (iii) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Sections 2.15 or 2.17) and obligations under the Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have received the prior written consent of the Administrative Agent, the Issuing Bank and the Swingline Lender, in each case to the extent the consent of such Person is required under Section 9.04(b), which consent (or consents) shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment and delegation required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment and delegation need not be a party thereto.

SECTION 2.20 Expansion Option. The Borrower may from time to time elect to increase the Commitments in minimum increments of $10,000,000 (and in integral multiples of $5,000,000 in excess thereof) so long as, after giving effect thereto, the aggregate amount of such increases does not exceed $250,000,000. The Borrower may arrange for any such increase to be provided by one or more Lenders (each Lender so agreeing to an increase in its Commitment, an "Increasing Lender"), or by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an "Augmenting Lender"), to increase their existing Commitments or extend Commitments, as the case may be; *provided* that (i) each Augmenting Lender shall be subject to the approval of the Administrative Agent, to the extent the approval of the Administrative Agent would be required to effect an assignment to such Augmenting Lender under Section 9.04(b), (ii) no Ineligible Institution may be an Augmenting Lender and (iii) (x) in the case of an Increasing Lender, the Borrower and such Increasing Lender execute an agreement substantially in the form of Exhibit B hereto (an "Increasing Lender Supplement"), and (y) in the case of an Augmenting Lender, the Borrower and such Augmenting Lender execute an agreement substantially in the form of Exhibit C hereto (an "Augmenting Lender Supplement"). No consent of any Lender (other than the Lenders participating in the increase) shall be required for any increase in Commitments pursuant to this Section 2.20. Increases and new Commitments created pursuant to this Section 2.20 shall become effective on the date agreed by the Borrower, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, and the Administrative Agent shall notify each Lender thereof. Notwithstanding the foregoing, no increase in the Commitments (or in the Commitment of any Lender) shall become effective under this paragraph unless, (i) on the proposed date of the effectiveness of such increase, there shall be no Event of Default that has occurred and is continuing and (ii) the Administrative Agent shall have received documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrower to borrow hereunder after giving effect to such increase. On the effective date of any increase in the Commitments, (i) each relevant Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its Applicable Percentage of such outstanding Revolving Loans, and (ii) the Borrower shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase in the Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Eurodollar Loan, shall be subject to indemnification by the Borrower pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Nothing contained in this Section 2.20 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

SECTION 2.21 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) the Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); *provided*, that, except as otherwise provided in Section 9.02, this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of all Lenders or each directly affected Lender;

(c) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the Lenders that are not Defaulting Lenders (the "non-Defaulting Lenders") in accordance with their respective Applicable Percentages but only to the extent that the sum of all non-Defaulting Lenders' Revolving Credit Exposures plus such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Defaulting Lender's Swingline Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) and (y) second, cash collateralize for the benefit of the Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the non-Defaulting Lenders pursuant to Section 2.12(a) and Section 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other non-Defaulting Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.21(c), and participating interests in any such newly made Swingline Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.21(c)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Swingline Lender or the Issuing Bank has a reasonable, good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swingline Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Swingline Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower, the Swingline Lender and the Issuing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage; provided that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Lenders that:

SECTION 3.01 Organization; Powers; Subsidiaries. Each of the Borrower and its Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite corporate, limited liability company or limited partnership power and authority, as the case may be, to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required. As of the date hereof, Schedule 3.01 hereto identifies each Subsidiary, noting whether such Subsidiary is a Subsidiary Guarantor, a Material Subsidiary or an Unrestricted Subsidiary, the jurisdiction of its organization and the percentage of issued and outstanding shares of each class of its Equity Interests owned by the Borrower and the other Subsidiaries.

SECTION 3.02 Authorization; Enforceability. The Transactions are within each Loan Party's corporate, limited liability company or limited partnership powers, as the case may be, and have been duly authorized by all necessary corporate, limited liability company or limited partnership actions, as the case may be, and, if required, actions by equity holders. The Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect (except for (i) any reports required to be filed by the Borrower with the SEC pursuant to the Securities Exchange Act of 1934, or (ii) those that may be required from time to time in the ordinary course of business that may be required to comply with certain covenants contained in the Loan Agreements), (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Restricted Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any material indenture, agreement or other instrument binding upon the Borrower or any of its Restricted Subsidiaries (including the Note Purchase Agreements executed in connection with the Senior Notes) or its assets, or give rise to a right thereunder to require any material payment to be made by the Borrower or any of its Restricted Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Restricted Subsidiaries.

SECTION 3.04 Financial Condition; No Material Adverse Change. (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 31, 2013 reported on by Ernst & Young, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended June 30, 2014, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since December 31, 2013, there has been no material adverse change in the business, assets, results of operations, or financial condition of the Borrower and its Subsidiaries, taken as a whole.

SECTION 3.05 Properties. (a) Each of the Borrower and its Restricted Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to the business of the Borrower and the Restricted Subsidiaries, taken as a whole, except for Liens permitted hereby and except where the failure to have such title or leasehold interest, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Each of the Borrower and its Restricted Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property, the failure to own or be licensed to use could reasonably be expected to result in a Material Adverse Effect, and the use thereof by the Borrower and its Restricted Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06 Litigation; Environmental and Labor Matters. (a) There are no actions, suits or proceedings or investigations by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Responsible Officer of the Borrower, threatened against or affecting the Borrower or any of its Restricted Subsidiaries (i) as to which there is a reasonable expectation of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or the Transactions.

(b) Except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Restricted Subsidiaries (i) has failed to comply with any applicable Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any applicable Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

SECTION 3.07 Compliance with Laws and Agreements. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments (including the Note Purchase Agreements executed in connection with the Senior Notes) binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08 Investment Company Status. Neither the Borrower nor any of its Restricted Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09 Taxes. Each of the Borrower and its Restricted Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 ERISA. As to the Borrower and its Restricted Subsidiaries, no ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11 Disclosure. Neither the Lender Presentation nor any of the other reports, financial statements, certificates or other written information (other than information of a global economic or industry nature) furnished by or on behalf of the Borrower or any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other written information so furnished) contained as of the date such reports, financial statements, certificates or other written information were so furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projections, estimates, pro forma financial information and forward-looking statements, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time.

SECTION 3.12 Federal Reserve Regulations. No part of the proceeds of any Loan have been used or will be used by the Borrower or any Subsidiary, whether directly or indirectly, for any purpose that entails a violation of Regulation T, U or X of the Board.

SECTION 3.13 Liens. There are no Liens on any of the real or personal properties of the Borrower or any Restricted Subsidiary except for Liens permitted by Section 6.02.

SECTION 3.14 No Default. No Default or Event of Default has occurred and is continuing.

SECTION 3.15 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees and, to the knowledge of the Borrower, its directors and its agents that act or will act in any capacity in connection with the credit facility established hereby (including, without limitation, with respect to the proceeds thereof and the Transactions contemplated hereby), are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or, to the knowledge of the Borrower or such Subsidiary, any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other Transactions will violate any Anti-Corruption Law or applicable Sanctions, including in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 3.16 Indebtedness. The Borrower has no Indebtedness except as permitted by Section 6.01.

ARTICLE IV

Conditions

SECTION 4.01 Effective Date. The effectiveness of this Agreement to amend and restate the Existing Agreement and the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent shall have received (i) from each party hereto, a counterpart of this Agreement signed on behalf of such party (or written evidence satisfactory to the Administrative Agent that such party has signed such a counterpart, which may include telecopy or electronic transmission of a signed signature page hereto), (ii) from each party thereto, a counterpart of the Subsidiary Guaranty signed on behalf of such party (or written evidence satisfactory to the Administrative Agent that such party has signed such a counterpart, which may include telecopy or electronic transmission of a signed signature page thereto) and (iii) from the Borrower, a counterpart of any promissory note requested by any Lender pursuant to Section 2.10(d) reasonably in advance of the Effective Date (or written evidence satisfactory to the Administrative Agent that the Borrower has signed such a counterpart, which may include telecopy or electronic transmission of a signed signature page thereto);

(b) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of (i) Baker Botts L.L.P., counsel for the Loan Parties, and (ii) in-house legal counsel for the Loan Parties, in each case, covering such matters relating to the Loan Parties, the Loan Documents or the Transactions as the Administrative Agent shall reasonably request. The Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received certificates of the secretary or an assistant secretary of each Loan Party (or, if any Loan Party does not have a secretary or assistant secretary, any other Person duly authorized to execute such a certificate on behalf of such Loan Party), certifying as to (i) specimen signatures of the persons authorized to execute Loan Documents to which such Loan Party is a party, (ii) copies of resolutions of the board of directors or other appropriate governing body of such Loan Party authorizing the execution and delivery of the Loan Documents to which it is a party and (iii) copies of such Loan Party's constituent organizational documents.

(d) The Administrative Agent shall have received, for each Loan Party, a certificate of good standing (or the equivalent) from the appropriate governing agency of such Loan Party's jurisdiction of organization (to the extent the concept of good standing is applicable in such jurisdiction).

(e) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, certifying (i) that the representations and warranties contained in Article III are true and correct as of such date and (ii) that no Default or Event of Default has occurred and is continuing as of such date.

(f) The Administrative Agent shall have received evidence reasonably satisfactory to it that all governmental and third party approvals necessary, or in the reasonable discretion of the Administrative Agent advisable, in connection with the Transactions have been obtained and are in full force and effect.

(g) The Lenders, the Administrative Agent and the Arranger shall have received all fees and other amounts due and payable by the Borrower on or prior to the Effective Date hereunder or under that certain Fee Letter, dated as of October 9, 2014, by and among JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC and the Borrower, including, to the extent invoiced on or prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.

(h) The Administrative Agent shall have received all unpaid interest and fees accrued under the Existing Agreement through the Effective Date and all other fees, expenses and other charges outstanding thereunder (including all amounts due under Section 2.15 thereof arising as a result of the termination of all interest periods thereunder on the Effective Date).

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects), on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall be true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects) on and as of such earlier date.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

SECTION 4.03 Effective Date Adjustments. If as a result of the amendment to the amount of the Commitments under the Existing Agreement contemplated hereby and the addition of new Lenders hereunder, any outstanding Revolving Loans are not be held pro rata in accordance with the new Commitments as of the Effective Date, then on the Effective Date, the Lenders shall make advances among themselves (either directly or through the Administrative Agent) so that after giving effect thereto the Revolving Loans will be held by the Lenders, pro rata in accordance with their respective Commitments. Any advances made under this Section 4.03 by a Lender shall be deemed to be a purchase of a corresponding amount of the Revolving Loans of the Lender or Lenders who shall receive such advances.

ARTICLE V

Affirmative Covenants

Until Facility Termination, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within 105 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit, other than with respect to or resulting from a maturity of any Loans under this Agreement occurring within one (1) year from the time such opinion is delivered) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within fifty (50) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Sections 5.09 and 6.11 and (iii) stating whether any change in GAAP or in the application thereof which has affected or will affect the Borrower's financial statements has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of said commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be;

(e) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request; and

(f) concurrently with any delivery of the consolidated financial statements under paragraph (a) or (b) above, if as of the date of such financial statements, there are any Unrestricted Subsidiaries, the related consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such consolidated financial statements.

Documents required to be delivered pursuant to clauses (a), (b) and (d) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval System; *provided* that, except in the case of clause (d), the Borrower shall notify (which may be by telecopy or electronic transmission) the Administrative Agent of the filing of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents.

SECTION 5.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent notice of the following, promptly upon any Responsible Officer of the Borrower obtaining knowledge thereof:

(a) the occurrence of any Default;

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

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; and

(d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

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

SECTION 5.03 Existence; Conduct of Business. The Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03. The Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect all the rights, licenses, permits, privileges and franchises used in the normal conduct of its business, except for such rights, licenses, permits, privileges and franchises the failure to preserve, renew or keep effective could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.04 Payment of Obligations. The Borrower will, and will cause each of its Restricted Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05 Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Restricted Subsidiaries to, (a) keep and maintain all its property in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 5.06 Books and Records; Inspection Rights. The Borrower will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities to the extent necessary to permit financial statements to be prepared in conformity with GAAP. The Borrower will, and will cause each of its Restricted Subsidiaries to, permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times during normal business hours and as often as reasonably requested; *provided* that (i) so long as no Event of Default has occurred and is continuing, the Borrower shall not be required to reimburse the Administrative Agent for the costs and expenses of more than one inspection per calendar year and (ii) the Borrower shall have the right to be present during discussions with accountants. The Borrower acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain reports pertaining to the Borrower and its Restricted Subsidiaries' assets for internal use by the Administrative Agent and the Lenders.

SECTION 5.07 Compliance with Laws and Material Contractual Obligations. The Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including without limitation Environmental Laws), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions, and will cause each Restricted Subsidiary to, comply with all agreements, contracts, and instruments binding on it or affecting its properties or business, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08 Use of Proceeds.

(a) The proceeds of the Loans will be used for general corporate purposes, of the Borrower and its Subsidiaries, including to refinance debt, make and pay dividends and distributions, to finance working capital needs, to make acquisitions and for other investments of the Borrower and its Subsidiaries, in each case as otherwise permitted hereunder.

(b) The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use and shall cause its Subsidiaries not to use, the proceeds of any Borrowing or Letter of Credit in any manner that would result in the representations and warranties set forth in Section 3.12 or the last sentence of Section 3.15 becoming untrue.

SECTION 5.09 Additional Subsidiary Guarantors.

(a) If, as of the end of any fiscal quarter of the Borrower for which Financials have been delivered hereunder, there shall exist any Material Subsidiary that is not already a Subsidiary Guarantor (each, a "New Material Subsidiary"), within fifty (50) days after the date on which Financials for such quarter are required to be delivered hereunder (or such longer period of time as the Administrative Agent may agree to in its sole discretion), the Borrower shall cause such New Material Subsidiary to (A) become a Subsidiary Guarantor by executing and delivering to the Administrative Agent a joinder agreement substantially in the form of Exhibit A to the Subsidiary Guaranty and (B) execute and/or deliver such other documentation of the types described under Sections 4.01(c) and (d) as the Administrative Agent may reasonably request to evidence such New Material Subsidiary's authority to enter into the Subsidiary Guaranty and become a Subsidiary Guarantor.

(b) If, as of the end of any fiscal quarter of the Borrower for which Financials have been delivered hereunder, the aggregate amount of Consolidated EBITDA for the period of four consecutive fiscal quarters then ended or Consolidated Total Assets as of the end of such quarter, in each case, attributable to all Restricted Subsidiaries (other than any Receivables Entity or any Restricted Subsidiary that is organized under the laws of any jurisdiction other than the United States of America, any state or commonwealth thereof or the District of Columbia) that are not Subsidiary Guarantors, exceeds fifteen percent (15%) of Consolidated EBITDA for such period or fifteen percent (15%) of Consolidated Total Assets as of such date, within fifty (50) days after the date on which Financials for such quarter are required to be delivered hereunder (or such longer period of time as the Administrative Agent may agree to in its sole discretion), the Borrower shall cause such additional Restricted Subsidiaries as may be necessary to eliminate such excess to (A) become Subsidiary Guarantors by executing and delivering to the Administrative Agent a joinder agreement substantially in the form of Exhibit A to the Subsidiary Guaranty and (B) execute and/or deliver such other documentation of the types described under Sections 4.01(c) and (d) as the Administrative Agent may reasonably request to evidence each such Restricted Subsidiary's authority to enter into the Subsidiary Guaranty and become a Subsidiary Guarantor.

(c) Notwithstanding the foregoing no Receivables Entity, nor any Restricted Subsidiary that is organized under the laws of any jurisdiction other than the United States of America, any state or commonwealth thereof or the District of Columbia, shall be required to become a Subsidiary Guarantor.

SECTION 5.10 Further Assurances. The Borrower will execute, and will cause each Subsidiary Guarantor to execute, any and all further documents, agreements and instruments, and take all such further actions, which may be required under any applicable law, or which either the Administrative Agent or the Required Lenders may reasonably request, to effectuate the Transactions.

SECTION 5.11 Designation of Subsidiaries.

(a) Any Financial Officer, on behalf of the Borrower, may, at any time from and after the Effective Date, designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Borrower shall be in compliance with the covenants set forth in Section 6.11 on a pro forma basis, (iii) such designation complies with Section 6.04 and (iv) no Restricted Subsidiary may be designated as an Unrestricted Subsidiary on more than two (2) occasions if it was previously designated as an Unrestricted Subsidiary (including any such designation as of the Effective Date). The designation of any Restricted Subsidiary as an Unrestricted Subsidiary after the Effective Date shall constitute an Investment by the Borrower or the applicable Restricted Subsidiary therein at the date of designation in an amount equal to the fair market value of the Borrower's or the applicable Restricted Subsidiary's Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or

Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower or the applicable Restricted Subsidiary in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's or such Restricted Subsidiary's Investment in such Subsidiary.

(b) A designation of a Restricted Subsidiary as an Unrestricted Subsidiary shall automatically and unconditionally release such Restricted Subsidiary from its guaranty of the Obligations (if any then exists) and it shall no longer constitute a Subsidiary Guarantor. The Borrower may, at its cost and expense, request that the Administrative Agent execute a separate guaranty release instrument to further evidence any guaranty release effected by this paragraph (b).

(c) As of the Effective Date, the Borrower hereby designates each of its Subsidiaries listed on Schedule 3.01 as an "Unrestricted Subsidiary" as an Unrestricted Subsidiary.

ARTICLE VI

Negative Covenants

Until Facility Termination, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01 Indebtedness. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and refinancings, refundings, extensions, renewals and replacements of any such Indebtedness does not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction costs and expenses in connection with such refinancing, refunding, extension, renewal or replacement);

(c) Indebtedness of the Borrower to any Restricted Subsidiary and of any Restricted Subsidiary to the Borrower or any other Restricted Subsidiary (it being understood, for the avoidance of doubt, that the extension of any loan or advance to any Foreign Restricted Subsidiary shall be subject to the restrictions set forth in Section 6.04(d));

(d) Guaranties by the Borrower of Indebtedness of any Restricted Subsidiary and by any Restricted Subsidiary of Indebtedness of the Borrower or any other Restricted Subsidiary (it being understood, for the avoidance of doubt, that any such Guaranties of Indebtedness of a Foreign Restricted Subsidiary shall be subject to the restrictions set forth in Section 6.04(d)).

(e) Indebtedness of the Borrower or any Restricted Subsidiary incurred to finance the acquisition, construction, or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and refinancings, refundings, extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction costs and expenses in connection with such refinancing, refunding, extension, renewal or replacement);

(f) (i) Indebtedness of any Person that becomes a Subsidiary after the date hereof; *provided* that such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary, and (ii) Indebtedness incurred or assumed in connection with an acquisition of property permitted hereunder, *provided* that such Indebtedness exists at the time such acquisition is consummated and is not created in contemplation of or in connection with such acquisition, and in each case, refinancings, refundings, extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction costs and expenses in connection with such refinancing, refunding, extension, renewal or replacement);

(g) Guaranties by the Borrower or any Restricted Subsidiary of Indebtedness or other obligations of any Unrestricted Subsidiary to the extent permitted by Sections 6.04(k) and 6.06;

(h) Indebtedness of the Borrower or any Subsidiary incurred pursuant to Permitted Receivables Facilities; provided that the Attributable Receivables Indebtedness thereunder shall not exceed an aggregate amount of $75,000,000 at any time outstanding;

(i) Indebtedness arising in connection with Swap Agreements permitted by Section 6.05;

(j) Indebtedness for borrowed money owed by Restricted Subsidiaries, provided that: (i) the aggregate outstanding principal amount of all the Indebtedness for borrowed money owed by the Restricted Subsidiaries on a consolidated basis (including that permitted under other clauses of this Section 6.01, but excluding the Indebtedness permitted under clauses (a), (h), (p)(i) and (p)(ii) of this Section 6.01) does not exceed at any time an amount equal to 15% of the Consolidated Tangible Net Worth of the Borrower;

(k) Indebtedness incurred in the ordinary course of business with respect to surety bonds, appeal bonds, bid bonds, performance bonds, return-of-money bonds, performance guarantees and other similar obligations;

(l) Indebtedness constituting obligations to reimburse worker's compensation insurance companies for claims paid by such companies on Borrower's or a Restricted Subsidiaries' behalf in accordance with the policies issued to Borrower and the Restricted Subsidiaries;

(m) Indebtedness of the Borrower or any of its Restricted Subsidiaries consisting of the financing of insurance premiums incurred in the ordinary course of business;

(n) 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 or other cash management services in the ordinary course of business;

(o) Indebtedness arising from agreements of the Borrower or any of its Restricted Subsidiaries providing for indemnification, holdback, adjustment of purchase price, earn-out or similar obligations, in each case, incurred or assumed in connection with an acquisition of property or disposition of property permitted pursuant to Section 6.03; and

(p) The following Indebtedness and any refinancings, refunding, renewals or extensions thereof, in addition to the other Indebtedness permitted by this Section, as long as on the date of the incurrence of any of the Indebtedness described below in this clause: (A) no Default exists or would result therefrom; (B) with respect to clause (iii) below only, the limitations on Restricted Subsidiary Indebtedness under clause (j) of this Section 6.01 are not exceeded; and (C) the Borrower is and, on a pro forma basis after giving effect to such Indebtedness, will be, in compliance with the financial covenants set forth in Sections 6.11 of this Agreement:

(i) Indebtedness of a Restricted Subsidiary who is a general partner of a Joint Venture arising for Indebtedness incurred by the Joint Venture as a result of the fact that the Restricted Subsidiary is the general partner of the Joint Venture;

(ii) Indebtedness incurred by the Borrower and the guaranty thereof by the Subsidiary Guarantors; and

(iii) in the event an Unrestricted Subsidiary that is designated as such on the Effective Date is subsequently designated as a Restricted Subsidiary pursuant to the terms hereof, the Indebtedness of such Unrestricted Subsidiary outstanding as of the Effective Date and any refinancings, refundings, extensions, renewals or replacements of such Indebtedness with Indebtedness of a similar type that does not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction costs and expenses in connection with such refinancing, refunding, extension, renewal or replacement).

The accrual of interest, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01.

SECTION 6.02 Liens. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) (i) Liens (if any) securing the Obligations and (ii) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Restricted Subsidiary existing on the date hereof and set forth in Schedule 6.02; *provided* that (i) such Lien shall not apply to any other property or asset of the Borrower or any Restricted Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and refinancings, refundings, extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction costs and expenses in connection with such refinancing, refunding, extension, renewal or replacement);

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to or within ninety days after the time such Person becomes a Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary (except improvements or proceeds of such property) and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and refinancings, refundings, extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof (except by the amount of any accrued interest and premiums with respect to such Indebtedness and transaction costs and expenses in connection with such refinancing, refunding, extension, renewal or replacement);

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary; *provided* that (i) such security interests secure Indebtedness permitted by Section 6.01(e), (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary;

(e) Liens on Permitted Receivables Facility Assets arising under Permitted Receivables Facilities;

(f) (i) Liens arising out of pledges or deposits made in the ordinary course of business of the Borrower and the Subsidiaries to secure the performance of bids, tenders, insurance or other contracts (other than for the repayment of borrowed money) or to secure statutory obligations, surety or appeal bonds or indemnity, performance or other similar bonds and (ii) Liens solely on cash earnest money deposits made in connection with any letter of intent or purchase agreement in connection with an Investment permitted hereunder; and

(g) Liens, in addition to those permitted by the other clauses of this Section, *provided* that the aggregate market value of the property and assets encumbered by all Liens incurred under the permissions of this clause (g) shall not exceed $30,000,000 and the aggregate principal amount of the Indebtedness secured by all such Liens does not exceed $30,000,000.

SECTION 6.03 Fundamental Changes and Asset Sales.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all of its assets, or all or substantially all of the Equity Interests of any of its Restricted Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that:

(i) any Person may merge into the Borrower in a transaction in which the Borrower is the surviving corporation;

(ii) any Restricted Subsidiary may merge into (i) the Borrower or (ii) one or more Restricted Subsidiaries (*provided* that when a Restricted Subsidiary that is a Loan Party is merging with a Restricted Subsidiary, the Loan Party shall be the surviving entity);

(iii) the Borrower or any Restricted Subsidiary may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to the Borrower or any Restricted Subsidiary; *provided* that if a transferor in such a transaction is a Loan Party, then the transferee must be a Loan Party;

(iv) the Borrower or any Subsidiary may transfer, sell and/or pledge Permitted Receivables Related Assets under Permitted Receivables Facilities (subject to the limitation that the Attributable Receivables Indebtedness thereunder shall not exceed an aggregate amount permitted under Section 6.01(h));

(v) any Restricted Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders;

(vi) the Borrower and the Restricted Subsidiaries may dispose of property and assets, including Equity Interests of a Subsidiary, either directly or through a merger or consolidation, to the extent permitted by clause (c) of this Section; and

(vii) so long as no Default exists or would result therefrom, a Subsidiary Guarantor may merge or consolidate with any other Person that is not a Restricted Subsidiary; provided that (i) such Subsidiary Guarantor shall be the continuing or surviving entity or (ii) if the Person formed by or surviving any such merger or consolidation (any such Person, the "Successor Company") is not such Subsidiary Guarantor, (A) the Successor Company shall be an entity organized or existing under the laws of the United States, any state or commonwealth thereof, the District of Columbia or any territory thereof, (B) the Successor Company shall expressly assume all the obligations of such Subsidiary Guarantor under the Subsidiary Guaranty and the other Loan Documents to which the Subsidiary Guarantor is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent, and (C) such Subsidiary Guarantor shall have delivered to the Administrative Agent an officer's certificate stating that such merger or consolidation and such supplement to the Subsidiary Guaranty comply with this Agreement; provided, further, that if the foregoing are satisfied, the Successor Company will succeed to, and be substituted for, such Subsidiary Guarantor under this Agreement.

(b) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Restricted Subsidiaries on the date of execution of this Agreement and any business reasonably related, incidental or ancillary thereto or that is a reasonable extension thereof.

(c) The Borrower will not, and will not permit any of the Restricted Subsidiaries to, sell, transfer, lease or otherwise dispose of any of its property or assets, including any Equity Interests owned by it (it being understood that the grant or existence of a Lien on any property shall not constitute a sale, transfer, lease or other disposition of such property), except:

(i) dispositions or sales of inventory, used, obsolete or surplus equipment and Permitted Investments in the ordinary course of business;

(ii) as long as no Default exists or would result therefrom, sales, transfers, leases and other dispositions of property to the Borrower or a Restricted Subsidiary; provided that any such sales, transfers, leases or other dispositions involving a Restricted Subsidiary shall be made in compliance with Section 6.06;

(iii) any transaction permitted under Section 6.03(a), any Investment permitted under Section 6.04 or any Restricted Payment permitted under Section 6.07;

(iv) the disposition or sale of accounts receivable pursuant to a Permitted Receivables Facility permitted by Section 6.01(h);

(v) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements or rights of first refusal between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(vi) the lapse or abandonment of intellectual property rights in the ordinary course of business which, in the reasonable good faith determination of the Borrower, is not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;

(vii) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings;

(viii) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind in the ordinary course of business;

(ix) dispositions of leasehold improvements or leased assets in connection with the termination of any operating lease;

(x) the unwinding or termination of any Swap Agreements; and

(xi) in addition to the dispositions permitted by the other clauses of this Section 6.03(c), leases, sales or other dispositions of property, either directly or through a merger or consolidation, that, together with all other property of the Borrower and the Restricted Subsidiaries previously disposed of pursuant to this clause (xi) during the twelve-month period ending with the month in which any such other disposition occurs (the "Calculation Period"), do not constitute a Substantial Portion of the property of the Borrower and the Restricted Subsidiaries; provided that all sales, transfers, leases and other dispositions of property made pursuant to this clause (xi) shall be made for fair value and, if the sale, transfer, lease or disposition in question, involves assets that have a fair value of more than $50,000,000, then at least 75% of the consideration therefor shall be in cash or cash equivalents. The term "Substantial Portion" means, on any date, property with a net book value that represents more than 15% of the Consolidated Total Assets as of the last day of the last month before the start of the applicable Calculation Period.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, purchase, hold or acquire (including pursuant to any merger or consolidation with any Person) any Equity Interests, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make any loans or advances to, Guarantee any obligations of, or make any investment in or capital contribution to, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any Person or any assets of any other Person constituting a business unit (each an "Investment"), except:

(a) Permitted Investments;

(b) Permitted Acquisitions and the Specified Acquisition;

(c) (i) Investments by the Borrower and its Restricted Subsidiaries existing on the Effective Date and identified on Schedule 6.04 and (ii) Investments consisting of any replacement, extensions, modifications or renewal of any such Investment existing on the Effective Date;

(d) Investments by the Borrower in or to any Restricted Subsidiary and made by any Restricted Subsidiary in or to the Borrower or any other Restricted Subsidiary; provided that any Investment made by the Borrower or a Restricted Subsidiary that is not a Foreign Subsidiary in a Foreign Restricted Subsidiary must be permitted by Section 6.04(k);

(e) loans and advances to directors, officers, consultants or employees as payroll advances or for business expenses incurred in the ordinary course of business or for other purposes so long as the aggregate principal amount of the loans and advances made for such other purposes does not exceed $1,000,000 at any one time outstanding;

(f) contributions of Permitted Receivables Facility Assets and cash deemed received from proceeds of Permitted Receivables Facility Assets to any Receivables Entity to the extent required or made pursuant to Permitted Receivables Facility Documents or to the extent necessary to keep such Receivables Entity properly capitalized to avoid insolvency or consolidation with a Loan Party or any of the Subsidiaries;

(g) Guarantees of Indebtedness permitted by Sections 6.01(d), (g) and (p) and Swap Agreements permitted by Section 6.05;

(h) Investments resulting from the receipt of non-cash consideration permitted to be received in connection with dispositions of property permitted by Section 6.03;

(i) advances, guarantees, endorsements for collection or deposit or customary trade arrangements with customers, suppliers, vendors or distributors in the ordinary course of business;

(j) lease, utility and other similar deposits in the ordinary course of business;

(k) any other Investment (other than Permitted Acquisitions) if, at the time of and immediately after giving effect thereto, (i) no Default has occurred and is continuing or would arise immediately after giving effect thereto and (ii) the Borrower and the Restricted Subsidiaries are in compliance, on a pro forma basis after giving effect to such Investment (and any related incurrence or repayment of Indebtedness, with any new Indebtedness being deemed to be amortized over the applicable testing period in accordance with its terms), with the covenants contained in Section 6.11.

SECTION 6.05 Swap Agreements. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Restricted Subsidiary has actual exposure (including those in respect of Equity Interests of the Borrower or any of its Restricted Subsidiaries but only if such Swap Agreements of the type described in this parenthetical can be settled with the issuance of Equity Interests in the Borrower or will be settled with the net cash proceeds received by the Borrower from the substantially concurrent issue or sale of other Equity Interest of the Borrower), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Restricted Subsidiary.

SECTION 6.06 Transactions with Affiliates. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its Restricted Subsidiaries not involving any other Affiliate, (c) any Restricted Payment permitted by Section 6.07 and (d) transactions contemplated by any Permitted Receivables Facility Documents.

SECTION 6.07 Restricted Payments. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock, (b) Restricted Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, (c) the Borrower and its Restricted Subsidiaries may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Restricted Subsidiaries, (d) any Receivables Entity may declare and pay dividends or other distributions to the Borrower or any wholly-owned Subsidiary thereof and (e) the Borrower and its Restricted Subsidiaries may make any other Restricted Payment so long as (i) no Default has occurred and is continuing or would arise after giving effect (including giving effect on a pro forma basis) thereto and (ii) the Borrower and the Restricted Subsidiaries are in compliance, on a pro forma basis after giving effect to such Restricted Payment, with the covenants contained in Section 6.11.

SECTION 6.08 Restrictive Agreements. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any Restricted Subsidiary to pay dividends or other distributions with respect to holders of its Equity Interests or to make or repay loans or advances to the Borrower or any other Restricted Subsidiary or to Guarantee Indebtedness of the Borrower or any other Restricted Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law, regulation or order or by any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions applicable to the Senior Notes and existing on the Effective Date or applicable to the other Indebtedness existing on the date hereof identified on Schedule 6.08 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition; provided that the restrictions applicable to the Senior Notes may be expanded to specifically restrict the ability of the Borrower or any Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the obligations arising under this Agreement as long as such Liens are permitted if Senior Notes are secured equally and ratably with the obligations arising under this Agreement), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of the assets of, or an Equity Interest in, a Restricted Subsidiary pending such sale, provided such restrictions and conditions apply only to the assets or Restricted Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by (1) any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or (2) Liens permitted by Section 6.02 or any document or instrument evidencing or granting any such Liens if such restrictions or conditions apply only to the property or assets that are the subject of such Liens, (v) clause (a) of the foregoing shall not

apply to customary provisions in leases, sub-leases, licenses, sub-licenses and other contracts restricting the assignment thereof, (vi) the foregoing shall not apply to customary restrictions and conditions contained in Permitted Receivables Facility Documents, (vii) the foregoing shall not apply to restrictions on cash or other deposits which are permitted to be subject to a Lien under Section 6.02 or covenants requiring a party to maintain a certain level of net worth to the extent such covenants are imposed by suppliers under contracts entered into in the ordinary course of business, (viii) the foregoing shall not apply to restrictions and conditions set forth in documentation (other than Subordinated Indebtedness Document) executed in connection with any Indebtedness permitted by Section 6.01(p)(ii) and incurred after the Effective Date; provided that (A) the restrictions and conditions set forth therein are substantially the same as those or less restrictive than those governing this Agreement and (B) the same shall not prohibit, restrict or impose any condition upon the ability of the Borrower or any Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the obligations arising under this Agreement unless such prohibition, restriction or imposition permits such Liens to the extent such Indebtedness is secured equally and ratably with the obligations arising under this Agreement; (ix) the foregoing shall not apply to restrictions and conditions set forth in any Subordinated Indebtedness Document executed in connection with any such Indebtedness permitted by Section 6.01(p)(ii) and incurred after the Effective Date; provided that (A) the restrictions and conditions set forth therein are substantially the same as those or less restrictive than those governing this Agreement and (B) the same shall not prohibit, restrict or impose any condition upon the ability of the Borrower or any Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the obligations arising under this Agreement, (x) the foregoing shall not apply to any restrictions and conditions imposed by agreement in effect at the time a Person becomes a Restricted Subsidiary, so long as such agreement was not entered into in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition) and (xi) the foregoing shall not apply to customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements, shareholder agreements and other similar agreements entered into in the ordinary course of business that restrict the transfer of ownership interests in or assets of such partnership, limited liability company, joint venture, corporation or similar person.

SECTION 6.09 Subordinated Indebtedness. The Borrower will not, nor will it permit any Restricted Subsidiary to, directly or indirectly voluntarily prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any Subordinated Indebtedness, unless (a) no Event of Default has occurred and is continuing or would arise immediately after giving pro forma effect thereto and (b) the Borrower and the Restricted Subsidiaries are in compliance, on a pro forma basis, with the covenants contained in Section 6.11.

SECTION 6.10 Sale and Leaseback Transactions. The Borrower will not, and will not permit any Restricted Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any fixed or capital assets that is made for cash consideration in an amount not less than the cost of such fixed or capital asset and is consummated within 90 days after the Borrower or such Restricted Subsidiary acquires or completes the construction of such fixed or capital asset.

SECTION 6.11 Financial Covenants.

(a) Maximum Leverage Ratio. The Borrower will not permit the ratio (the "Leverage Ratio"), determined as of the end of each of its fiscal quarters ending on and after December 31, 2014, of (i) Consolidated Total Indebtedness as of the date of determination to (ii) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending with the end of such fiscal quarter, all calculated for the Borrower and its Restricted Subsidiaries on a consolidated basis, to be greater than 3.50 to 1.00.

(b) Minimum Interest Coverage Ratio. The Borrower will not permit the ratio (the "Interest Coverage Ratio"), determined as of the end of each of its fiscal quarters ending on and after December 31, 2014, of (i) Consolidated EBITDA to (ii) Consolidated Interest Expense, in each case for the period of four (4) consecutive fiscal quarters ending with the end of such fiscal quarter, all calculated for the Borrower and its Restricted Subsidiaries on a consolidated basis, to be less than 2.50 to 1.00.

ARTICLE VII

Events of Default

SECTION 7.01 Events of Default. If any of the following events ("Events of Default") shall occur:

(a) (i) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise, or (ii) the Borrower shall fail to pay any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, and such failure shall continue unremedied for one (1) Business Day;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Section 7.01) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) any representation, warranty or certification made or deemed made by or on behalf of the Borrower or any Restricted Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect (or in the case of any representation or warranty that is qualified by materiality or reference to Material Adverse Effect, shall prove to have been incorrect in any respect) when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.01(a), (b) or (c), 5.02, 5.03 (with respect to the Borrower's existence) or 5.08 or in Article VI;

(e) the Borrower or any Subsidiary Guarantor, as applicable, shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Section 7.01) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof from the Administrative Agent to the Borrower (which written notice will be given at the request of any Lender);

(f) the Borrower or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (after expiration of any applicable grace period);

(g) (i) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof prior to its scheduled maturity; *provided* that this clause (i) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness and (ii) any default in the observance or performance of any of the obligations of the Borrower or any Restricted Subsidiary under any Swap Agreement that results in the exercise by the counterparty thereunder of such counterparty's right to terminate its position under such Swap Agreement, and the Swap Termination Value owed by the Borrower or such Restricted Subsidiary as a result of such termination is greater than $10,000,000;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief with respect to itself or its debts under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Material Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of $10,000,000 (to the extent not covered by independent third party insurance as to which the respective insurer does not dispute coverage) shall be rendered against the Borrower, any Restricted Subsidiary or any combination thereof and the same shall remain undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Restricted Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur; or

(n) any material provision of this Agreement or the Subsidiary Guaranty for any reason ceases to be valid, binding and enforceable in accordance with its terms (or the Borrower or any Subsidiary Guarantor shall assert the same in writing), other than the expiration or termination of the Subsidiary Guaranty with respect to any Subsidiary Guarantor in accordance with its terms;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Section 7.01), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Borrower accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Section 7.01, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations accrued hereunder and under the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity.

ARTICLE VIII

The Administrative Agent

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders (including the Swingline Lender and the Issuing Bank), and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” as used herein or in any other Loan Documents (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or assign or otherwise transfer its rights, interests and obligations hereunder.

None of the Lenders, if any, identified in this Agreement as a Syndication Agent or Co-Documentation Agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as Syndication Agent or Co-Documentation Agents, as applicable, as it makes with respect to the Administrative Agent in the preceding paragraph.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

ARTICLE IX

Miscellaneous

SECTION 9.01 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas, 75219, Attention of D. Craig Kesler, Executive Vice President - Finance and Administration and Chief Financial Officer., (Facsimile No. (214) 432-2110; Email: ckesler@eaglematerials.com);

(ii) if to the Administrative Agent, the Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. 2200 Ross Avenue, 3rd Floor, Dallas, Texas, 75201, Attention of Brandon K. Watkins, (Facsimile No. (214) 965–2044; Email: brandon.k.watkins@jpmorgan.com), with a copy to JPMorgan Chase Bank, N.A., Mid Corp Loan and Agency Services Group, 10 South Dearborn Street, 19th Floor, Mailcode: IL1-0010, Chicago, IL 60603, Attention: April Yebd (Telephone: 312-732-2628; Facsimile: 888-208-7168; Email: Jpm.agency.servicing.4@jpmchase.com); and

(iii) if to any other Lender, to it at its address (or facsimile number or email address) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Any party hereto may change its address or telecopy for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available". The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Communications through an Electronic System, except to the extent the liability of any Agent Party is found in a final non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such Agent Party's gross negligence or willful misconduct. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section, including through an Electronic System.

SECTION 9.02 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.20 with respect to an Increasing Lender Supplement or an Augmenting Lender Supplement, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the parties thereto, in each case with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby (except that any amendment or modification of the financial covenants in this Agreement (or defined terms used in the financial covenants in this Agreement) shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) change Section 2.18(b) or (d) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vi) release all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty (other than in accordance with the terms hereof and the Subsidiary Guaranty), without the written consent of each Lender or (vii) modify any provision of Section 2.06(c) regarding cash collateral, or release any cash collateral provided pursuant to Section 2.06(c) prior to the expiration or termination of each Letter of Credit, without the consent of each Lender; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any change to Section 2.21 shall require the consent of the Administrative Agent, the Issuing Bank and the Swingline Lender). Notwithstanding the foregoing, no consent with respect to any amendment, waiver or other modification of this Agreement shall be required of any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in clause (i), (ii) or (iii) of the first proviso of this paragraph and then only in the event such Defaulting Lender shall be directly affected by such amendment, waiver or other modification.

(c) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (x) to add one or more credit facilities to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and Lenders.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a "Non-Consenting Lender"), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower and the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

(e) Notwithstanding anything to the contrary herein, the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03 Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Arrangers and their Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and any other Loan Document, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; *provided* that, in each case under this clause (a), legal expenses shall be limited to a single counsel selected by the Administrative Agent and a single local counsel to the Administrative Agent in each relevant jurisdiction and a single special counsel to the Administrative Agent in each relevant specialty (in each case except allocated costs of in-house counsel) in connection with the foregoing.

(b) The Borrower shall indemnify the Administrative Agent, the Arranger, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use, or the proposed use, of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Borrower or any other Loan Party or its or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available (A) to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to arise from the gross negligence, bad faith, unlawful conduct or willful misconduct of such Indemnitee, (B) to the extent that such losses, claims, damages, liabilities or related expenses arise from a material breach of the obligations of such Indemnitee under the Loan Documents, as determined in by a final, nonappealable judgment of a court of competent jurisdiction pursuant to a claim brought by the Borrower, (C) to the extent that such losses, claims, damages, liabilities or related expenses arise out of, or in connection with, any proceeding that does not involve an act or omission by the Borrower or any of its Affiliates and that is brought by an Indemnitee against any other Indemnitee (other than in its capacity as the Administrative Agent, Arranger, Co-Syndication Agent, Co-Documentation Agent or bookrunner with respect to the credit facility evidenced hereby) or (D) with respect to any settlement of any proceeding if the amount of such settlement was effected without the Borrower's consent (which consent shall not be unreasonably withheld), but if settled with the Borrower's written consent or if there is a final judgment for the plaintiff in any such proceeding, the Borrower agrees to indemnify and hold harmless each Indemnitee from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with this Section 9.03(b). The Borrower shall not, without the prior written consent of the applicable Indemnitee (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (x) such settlement includes an unconditional release of such Indemnitee in form and substance reasonably satisfactory to such Indemnitee from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of such Indemnitee or any injunctive relief or other non-monetary remedy; *provided*, *further*, that all out-of-pocket legal expenses shall be limited to one firm of counsel for all Indemnitees and if necessary, one firm of local counsel in each appropriate jurisdiction and one firm of special counsel in each appropriate specialty, in each case for all Indemnitees (and, in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs the Borrower in writing of such conflict and therefore retains its own counsel, of one additional firm of counsel for all such affected Indemnitees). This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (it being understood that the Borrower's failure to pay any such amount shall not relieve the Borrower of any default in the payment thereof); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Issuing Bank or the Swingline Lender in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, and each Indemnitee shall not assert, and hereby waives, and claim against each Loan Party (i) for any damages arising from the use by unintended recipients of information or other materials distributed by it through telecommunications, electronic or other information transmission systems (including the Internet) in connection with the Loan Documents, or (ii) on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower (provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof); provided, further, that no consent of the Borrower shall be required (i) if such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund or (ii) if an Event of Default pursuant to Section 7.01 (a), (b), (h) or (i) has occurred and is continuing);

(B) the Administrative Agent (provided that no consent of the Administrative Agent shall be required if such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund);

(C) the Issuing Bank; and

(D) the Swingline Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, *provided* that no such consent of the Borrower shall be required if an Event of Default pursuant to Section 7.01 (a), (b), (h) or (i) has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of $3,500, such fee to be paid by either the assigning Lender or the assignee Lender or shared between such Lenders; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its affiliates and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) the Borrower, any of its Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; *provided* that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07, 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant"), other than an Ineligible Institution, in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; *provided* that such Participant (A) agrees to be subject to

the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.15, 2.16 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, email, .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 9.07 Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final and in whatever currency denominated) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower or any Subsidiary Guarantor against any of and all of the Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan, and of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority having jurisdiction over such Person (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (1) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (2) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (i) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower or any of its Affiliates; provided such source is not known by the receiving party to be bound by a confidentiality agreement with or other

contractual, legal or fiduciary obligation of confidentiality to Borrower, or (i) to any direct or indirect contractual counterparty with a Lender or its Affiliates in a Swap Agreement or such counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.12); *provided* that, unless specifically prohibited by applicable law or court order, each Lender shall notify the Borrower of any request by any regulatory authority or representative thereof or pursuant to legal process (other than any such request in connection with any examination of the financial condition of such Lender by such regulatory authority) for disclosure of any such nonpublic information prior to disclosure of such information. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its Subsidiaries or their respective businesses, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Borrower *provided* that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN THE IMMEDIATELY PRECEDING PARAGRAPH FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY OR ON BEHALF OF THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

SECTION 9.13 USA PATRIOT Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act.

SECTION 9.14 Releases of Subsidiary Guarantors. (a) A Subsidiary Guarantor shall automatically be released and discharged in full from its obligations under the Subsidiary Guaranty upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Guarantor ceases to be a Subsidiary; *provided* that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise. In connection with any termination or release pursuant to this Section, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent.

(b) Further, the Administrative Agent may (and is hereby irrevocably authorized by each Lender to), upon the request of the Borrower, release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty (i) if such Subsidiary Guarantor is no longer a Material Subsidiary or (ii) if, as of the time such Subsidiary Guarantor is released and immediately after giving effect thereto, the Guarantee of such Subsidiary Guarantor is not required by Section 5.09(b).

(c) At such time as the principal and interest on the Loans, all LC Disbursements, the fees, expenses and other amounts payable under the Loan Documents and the other Obligations (other than contingent indemnification obligations and other Obligations expressly stated to survive such payment and termination) shall have been paid in full in cash, the Commitments shall have been terminated or expired and no Letters of Credit shall be outstanding (or, if outstanding, such Letters of Credit have been cash collateralized or other arrangements with respect thereto have been made, in each case, on terms reasonably satisfactory to the Administrative Agent and the Issuing Bank) (such time, "Facility Termination"), the Subsidiary Guaranty and all obligations (other than those expressly stated to survive such termination) of each Subsidiary Guarantor thereunder shall automatically terminate and be released and discharged in full, all without delivery of any instrument or performance of any act by any Person.

SECTION 9.15 Maximum Interest Rate.

(a) No interest rate specified in any Loan Document shall at any time exceed the Maximum Rate. If at any time the interest rate (the "Contract Rate") for any obligation under the Loan Documents shall exceed the Maximum Rate, thereby causing the interest accruing on such obligation to be limited to the Maximum Rate, then any subsequent reduction in the Contract Rate for such obligation shall not reduce the rate of interest on such obligation below the Maximum Rate until the aggregate amount of interest accrued on such obligation equals the aggregate amount of interest which would have accrued on such obligation if the Contract Rate for such obligation had at all times been in effect. As used herein, the term "Maximum Rate" means, at any time with respect to any Lender, the maximum rate of nonusurious interest under applicable law that such Lender may contract for, charge, reserve, or receive. The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges contracted for, charged, reserved, or received in connection with the Loan Documents that constitute interest under applicable law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate. For purposes of determining the Maximum Rate under Texas law, the applicable rate ceiling shall be the weekly rate ceiling described in, and computed in accordance with, Chapter 303 of the Texas Finance Code.

(b) No provision of any Loan Document shall require the payment or the collection of interest in excess of the maximum amount permitted by applicable law. If any excess interest is hereby provided for, or shall be adjudicated to be so provided, in any Loan Document or otherwise in connection with this loan transaction, the provisions of this Section shall govern and prevail and neither Borrower nor the sureties, guarantors, successors, or assigns of Borrower shall be obligated to pay the excess amount of such interest or any other excess sum paid for the use, forbearance, or detention of sums loaned pursuant hereto. In the event any Lender ever receives, or collects, interest in excess of the maximum lawful amount of interest, such amount which is or would be in excess of the maximum amount permitted by applicable law shall be applied as a payment and reduction of the principal of the obligations outstanding hereunder, and, if the principal of the obligations outstanding hereunder has been paid in full or would be paid in full by all or part of such application, any remaining excess shall forthwith be paid to the Borrower. In determining whether or not the interest contracted for, charged, reserved or received exceeds the Maximum Rate, Borrower and each Lender shall, to the extent permitted by applicable law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread the total amount of interest contracted for, charged, reserved and received throughout the entire contemplated term of the obligations outstanding hereunder so that interest for the entire term does not exceed the Maximum Rate.

SECTION 9.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Lenders and their Affiliates, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) no Lender or any of its Affiliates has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except, in the case of a Lender, those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and no Lender or any of its Affiliates has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against each of the Lenders and their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.17 Amendment and Restatement. On the Effective Date (i) this Agreement renews and extends (and does not release or novate) the Indebtedness and Obligations outstanding under the Existing Agreement, (ii) the "Commitments" (as defined in the Existing Credit Agreement) are renewed and replaced by the Commitments hereunder the Existing Agreement shall be amended and restated in its entirety to be in the form of this Agreement, and (iii) the "Subsidiary Guaranty" (as defined in the Existing Credit Agreement), as in effect immediately prior to the Effective Date (the "Existing Subsidiary Guaranty"), shall be amended and restated in its entirety to be in the form of the Subsidiary Guaranty.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized persons as of the day and year first above written.

EAGLE MATERIALS INC.,
as the Borrower

By /s/ D. Craig Kesler
Name: D. Craig Kesler
Title: Executive Vice President – Finance and Administration and Chief Financial Officer

[Signature Page – Credit Agreement]

JPMORGAN CHASE BANK, N.A., individually as a Lender, as the Swingline Lender, as the Issuing Bank and as Administrative Agent

By /s/ Brandon K. Watkins
Name: Brandon K. Watkins
Title: Vice President

[Signature Page – Credit Agreement]

BANK OF AMERICA, N.A., individually as a Lender and as Co-Syndication Agent

By /s/ Jennifer Yan
Name: Jennifer Yan
Title: Senior Vice President

[Signature Page – Credit Agreement]

BRANCH BANKING AND TRUST COMPANY individually as a Lender and as Co-Syndication Agent

By /s/ Allen K. King
Name: Allen K. King
Title: Senior Vice President

[Signature Page – Credit Agreement]

WELLS FARGO BANK, N.A. individually as a Lender and as Co-Syndication Agent

By /s/ Andrew M. Widmer
Name: Andrew M. Widmer
Title: Vice President

[Signature Page – Credit Agreement]

REGIONS BANK, individually as a Lender and as Co-Documentation Agent

By /s/ Richard M. Prewitt
Name: Richard M. Prewitt
Title: Senior Vice President

[Signature Page – Credit Agreement]

SUNTRUST BANK, individually as a Lender and as Co-Documentation Agent

By /s/ Vinay Desai
Name: Vinay Desai
Title: Vice President

[Signature Page – Credit Agreement]

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By /s/ Christian S. Brown
Name: Christian S. Brown
Title: Senior Vice President

[Signature Page – Credit Agreement]

BOKF, N.A. dba BANK OF TEXAS, as a Lender

By /s/ Mike Meredith
Name: Mike Meredith
Title: Senior Vice President

[Signature Page – Credit Agreement]

THE NORTHERN TRUST COMPANY, as a Lender

By /s/ John Canty
Name: John Canty
Title: Senior Vice President

[Signature Page – Credit Agreement]

AMEGY BANK NATIONAL ASSOCIATION, as a Lender

By /s/ Claire Harrison
Name: Claire Harrison
Title: Vice President

[Signature Page – Credit Agreement]

SCHEDULE 1.01(a)
TO
EAGLE MATERIALS INC.
THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Existing Letters of Credit

1. Letter of Credit Number TDTS-251385 issued by JPMorgan Chase Bank, N.A. in the face amount of $2,632,638 in favor of Ace American Insurance, with an expiry date of May 7, 2015.
2. Letter of Credit Number D-291129 issued by JPMorgan Chase Bank, N.A. in the face amount of $47,725.70 in favor of City of Austin Development and Review Inspection Department, with an expiry date of July 31, 2015.
3. Letter of Credit Number CPCS-809282 issued by JPMorgan Chase Bank, N.A. in the face amount of $2,076,072 in favor of Discover-Re, with an expiry date of April 14, 2015.
4. Letter of Credit Number CPCS-401745 issued by JPMorgan Chase Bank, N.A. in the face amount of $2,700,000 in favor of Zurich American Insurance Company, with an expiry date of April 8, 2015.
5. Letter of Credit Number CPCS-274692 issued by JPMorgan Chase Bank N.A. in the face amount of $100,000 in favor of the Department of Workforce Services with an expiry date of February 7, 2015.

SCHEDULE 2.01
TO
EAGLE MATERIALS INC.
THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Commitments

Lender		Commitment	Applicable Percentage
JPMorgan Chase Bank, N.A.	$	66,500,000	13.3%
Bank of America, N.A.	$	62,500,000	12.5%
Branch Banking and Trust Company	$	62,500,000	12.5%
Wells Fargo Bank, N.A.	$	62,500,000	12.5%
Regions Bank	$	58,000,000	11.6%
SunTrust Bank	$	58,000,000	11.6%
PNC Bank, N.A.	$	45,000,000	9.0%
The Northern Trust Company	$	40,000,000	8.0%
BOKF, N.A. dba Bank of Texas	$	25,000,000	5.0%
Amegy Bank National Association	$	20,000,000	4.0%
Total:	$	500,000,000	100.0%

SCHEDULE 6.01
TO
EAGLE MATERIALS INC.
THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Existing Indebtedness

The Indebtedness evidenced by the Senior Notes

SCHEDULE 6.02
TO
EAGLE MATERIALS INC.
THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Existing Liens

1. Liens evidenced by financing statement number 2013 4239761, on Form UCC-1, filed in the Delaware Department of State, U.C.C. Filing Section, on October 29, 2013, against Audubon Materials LLC, in favor of UMB Bank, N.A., as trustee.

2. Liens evidenced by financing statement number 2006041440-5, on Form UCC-1, filed in the office of the Secretary of State of the State of Nevada, on December 18, 2006, against Western Aggregates LLC, in favor of Applied Industries Technologies-CA LLC.

SCHEDULE 6.04
TO
EAGLE MATERIALS INC.
THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Existing Investments

1. Investments in Equity Interests of each Subsidiary, as set forth on Schedule 3.01.
2. Promissory Note dated October 16, 2002 payable to Republic Paperboard Company LLC ("RPC") from JBC Holding Company LLC in the original principal amount of $2,500,000 ("JBC Note"). The JBC Note is fully reserved, and the payment terms were extended pursuant to that certain First Extension Agreement dated effective as of October 16, 2003 between JBC Holding Company LLC, Jefferson Investment LLC and RPC.
3. Security Agreement between Republic Paperboard Company of West Virginia LLC ("RPCWV") and RPC, covering certain assets of RPCWV and securing the JBC Note.
4. Guaranty dated October 16, 2001 made by RPCWV in favor of RPC in respect of the JBC Note.
5. Deed of Trust dated October 16, 2001 by RPCWV for the benefit of RPC and securing the JBC Note.
6. Promissory Note dated as of February 16, 2010 executed by Super Mix, Inc. to CCP Concrete/Aggregates LLC in the original principal amount of $3,500,000 ("Super Mix Note").
7. Mortgage dated February 16, 2010 executed by Super Mix, Inc. for the benefit of CCP Concrete/Aggregates LLC and securing the Super Mix Note.

SCHEDULE 6.08
TO
EAGLE MATERIALS INC.
THIRD AMENDED AND RESTATED CREDIT AGREEMENT

Restrictive Agreements

None.

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____

   [and is [a Lender][an Affiliate/Approved Fund of [identify Lender]]][1]

3. Borrower(s): Eagle Materials Inc., a Delaware corporation

4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: The Third Amended and Restated Credit Agreement dated as of October [ ], 2014 among Borrower, the Lenders parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, Issuing Bank and Swingline Lender, and the other agents parties thereto

6. Assigned Interest:

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/Loans[2]
$	$	%
$	$	%
$	$	%

Effective Date: , 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[1] Select as applicable.

[2] Set forth, so at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR:

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE:

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

Consented to and Accepted by:

JPMORGAN CHASE BANK, N.A.,
as [Administrative Agent,]3 Issuing Bank and Swingline Lender

By: _____
Name:
Title:

[Accepted by:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent,

By: _____
Name:
Title:]4

[Consented to:]5

EAGLE MATERIALS INC.,
as the Borrower

By: _____
Name:
Title:

3 To be added only if the consent of the Administrative Agent is required pursuant to Section 9.04(b)(i)(B) of the Credit Agreement. Signature block to be modified as appropriate to conform to requirements of Section 9.04(b).

4 To be added if consent is not required in above signature block.

5 To be added only if the consent of the Borrower is required pursuant to Section 9.04(b)(i)(A) of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Electronic System shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B

FORM OF INCREASING LENDER SUPPLEMENT[6]

This INCREASING LENDER SUPPLEMENT, dated as of , 20 (this "Supplement"), is by and among each of the signatories hereto, and supplements that Third Amended and Restated Credit Agreement, dated as of October [ ], 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto.

W I T N E S S E T H

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the Aggregate Commitment under the Credit Agreement by requesting one or more Lenders to increase the amount of its Commitment;

WHEREAS, the Borrower has given notice to the Administrative Agent of its intention to increase the Aggregate Commitment pursuant to such Section 2.20; and

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the undersigned Increasing Lender now desires to increase the amount of its Commitment under the Credit Agreement by executing and delivering to the Borrower and the Administrative Agent this Supplement;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Increasing Lender agrees, subject to the terms and conditions of the Credit Agreement, that on the date of this Supplement it shall have its Commitment increased by $[ ], thereby making the aggregate amount of its total Commitments equal to $[ ].

2. The Borrower hereby represents and warrants that no Event of Default has occurred and is continuing on and as of the date hereof.[7]

3. Capitalized terms defined in the Credit Agreement shall have their defined meanings when used herein.

4. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

5. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document. Delivery of an executed counterpart of a signature page to this Supplement by telecopy, email, .pdf or other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart to this Supplement.

[remainder of this page intentionally left blank]

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6 To be modified as appropriate to be a master Increasing Lender Supplement, with final commitment schedule attached, if there are multiple Increasing Lenders.

7 Borrower to have delivered to the Administrative Agent documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrower to borrow under the Credit Agreement after giving effect to the increase.

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF INCREASING LENDER]

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above:

EAGLE MATERIALS INC.,
as the Borrower

By: _____
Name:
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

EXHIBIT C

FORM OF AUGMENTING LENDER SUPPLEMENT[8]

AUGMENTING LENDER SUPPLEMENT, dated as of , 20 (this "Supplement"), is by and among each of the signatories hereto, and supplements that Third Amended and Restated Credit Agreement, dated as of October [ ], 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto.

W I T N E S S E T H

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the Aggregate Commitment under the Credit Agreement by requesting one or more banks, financial institutions or other entities to provide new Commitments under the Credit Agreement;

WHEREAS, the Borrower has given notice to the Administrative Agent of its intention to increase the Aggregate Commitment pursuant to such Section 2.20; and

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the undersigned Augmenting Lender now desires to provide a Commitment under the Credit Agreement by executing and delivering to the Borrower and the Administrative Agent this Supplement;

WHEREAS, the undersigned Augmenting Lender was not an original party to the Credit Agreement but now desires to become a party thereto;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Augmenting Lender agrees to be bound by the provisions of the Credit Agreement and agrees that it shall, on the date of this Supplement, become a Lender for all purposes of the Credit Agreement to the same extent as if originally a party thereto, with a Commitment of $[ ].

2. The undersigned Augmenting Lender (a) represents and warrants that it is legally authorized to enter into this Supplement; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and has reviewed such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Supplement; (c) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

3. The undersigned Augmenting Lender's address for notices for the purposes of the Credit Agreement is as follows:

[ ]

4. The Borrower hereby represents and warrants that no Event of Default has occurred and is continuing on and as of the date hereof.[9]

5. Capitalized terms defined in the Credit Agreement shall have their defined meanings when used herein.

6. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

7. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document. Delivery of an executed counterpart of a signature page to this supplement by telecopy, email, .pdf or other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart to this Supplement.

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8 To be modified as appropriate to be a master Augmenting Lender Supplement, with final commitment schedule attached, if there are multiple Augmenting Lenders.

9 Borrower to have delivered to the Administrative Agent documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrower to borrow under the Credit Agreement after giving effect to the increase.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF AUGMENTING LENDER]

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above:

EAGLE MATERIALS INC., as the Borrower

By: _____
Name:
Title:

Acknowledged [and agreed to][10] as of the date first written above:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

[10] Insert if consent of the Administrative Agent to the Augmenting Lender is required under Section 2.20 of the Credit Agreement.

EXHIBIT D

FORM OF

SECOND AMENDED AND RESTATED SUBSIDIARY GUARANTY

THIS SECOND AMENDED AND RESTATED SUBSIDIARY GUARANTY (as amended, restated, supplemented or otherwise modified from time to time, this "Guaranty") is made as of [ ], 2014, by and among each of the undersigned (the "Initial Guarantors" and, along with any additional Subsidiaries of the Borrower which become parties to this Guaranty by executing a supplement hereto in the form attached as Annex I, the "Guarantors") in favor of the Administrative Agent, for the ratable benefit of the Holders of Guaranteed Obligations (as defined below), under the Credit Agreement referred to below.

WITNESSETH

WHEREAS, EAGLE MATERIALS INC., a Delaware corporation (the "Borrower"), the institutions from time to time parties thereto as lenders (the "Lenders"), JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto, have entered into that certain Third Amended and Restated Credit Agreement dated as of [ ], 2014 (as amended, restated, supplemented or otherwise modified, and as in effect from time to time, the "Credit Agreement"), providing, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to the Borrower;

WHEREAS, certain of the parties hereto have executed and delivered that certain Amended and Restated Guaranty Agreement, dated as of December 16, 2004 (as heretofore amended, supplemented or otherwise modified the "Existing Guaranty"), in connection with and for the benefit of the lenders under the Prior Agreement (as defined in the Credit Agreement);

WHEREAS, it is a condition precedent to the extensions of credit by the Lenders under the Credit Agreement that each of the Guarantors (constituting, as of the date hereof, all of the Subsidiaries of the Borrower required to execute this Guaranty pursuant to Section 5.09 of the Credit Agreement) execute and deliver this Guaranty, amending and restating the Existing Guaranty in its entirety, whereby each of the Guarantors shall guarantee the payment when due of all Obligations; and

WHEREAS, in consideration of the direct and indirect financial and other support that the Borrower has provided, and such direct and indirect financial and other support as the Borrower may in the future provide, to the Guarantors, and in order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement, each of the Guarantors is willing to guarantee the Obligations of the Borrower;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. Capitalized terms defined in the Credit Agreement and not otherwise defined herein have, as used herein, the respective meanings provided for therein.

SECTION 2. Representations, Warranties and Covenant.

(A) On the Effective Date, each Guarantor represents and warrants as of such date and solely as to itself that the representations and warranties set forth in Sections 3.01, 3.02 and 3.03 of the Credit Agreement are true and correct.

(B) On the date of any Borrowing or the issuance, amendment, renewal or extension of any Letter of Credit, each Guarantor represents and warrants solely as to itself that the representations and warranties of such Guarantor set forth in Sections 3.01, 3.02 and 3.03 of the Credit Agreement are true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty is true and correct in all respects), on and as of the date of such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty is true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects) on and as of such earlier date.

(C) Each Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken by it under the Credit Agreement or not taken by it under the Credit Agreement, as the case may be, so that no Default or Event of Default is directly caused by the failure to take such action or to refrain from taking such action.

SECTION 3. The Guaranty. Each of the Guarantors hereby unconditionally guarantees to the Administrative Agent, for the ratable benefit of the Holders of Guaranteed Obligations, jointly with the other Guarantors and severally, the full and punctual payment when due (whether at stated maturity, upon acceleration or otherwise) of the Obligations (referred to collectively as the "Guaranteed Obligations" and the holders from time to time of the Guaranteed Obligations being referred to collectively as the "Holders of Guaranteed Obligations"). Upon (x) the failure by the Borrower or any of its Affiliates, as applicable, to pay punctually Guaranteed Obligations, and (y) such failure continuing beyond any applicable grace or notice and cure period, each of the Guarantors agrees that it shall forthwith on demand pay such Guaranteed Obligations at the place and in the manner specified in the Credit Agreement or the relevant Loan Document, as the case may be. Each of the Guarantors hereby agrees that this Guaranty is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection.

SECTION 4. Guaranty Unconditional. The obligations of each of the Guarantors hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(A) any extension, renewal, settlement, indulgence, compromise, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;

(B) any modification or amendment of or supplement to the Credit Agreement or any other Loan Document, including, without limitation, any such amendment which may increase the amount of, or the interest rates applicable to, any of the Guaranteed Obligations;

(C) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof, or any nonperfection or invalidity of any direct or indirect security for the Guaranteed Obligations;

(D) any change in the corporate, partnership or other existence, structure or ownership of the Borrower or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower or any other guarantor of the Guaranteed Obligations, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower or any other guarantor of any of the Guaranteed Obligations;

(E) the existence of any claim, setoff or other rights which the Guarantors may have at any time against the Borrower, any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any Holder of Guaranteed Obligations or any other Person, whether in connection herewith or in connection with any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(F) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof, or any other invalidity or unenforceability relating to or against the Borrower or any other guarantor of any of the Guaranteed Obligations, for any reason related to the Credit Agreement, any other Loan Document, or any provision of applicable law, decree, order or regulation of any jurisdiction purporting to prohibit the payment by the Borrower or any other guarantor of the Guaranteed Obligations, of any of the Guaranteed Obligations or otherwise affecting any term of any of the Guaranteed Obligations;

(G) the failure of the Administrative Agent to take any steps to perfect and maintain any security interest in, or to preserve any rights to, any security or collateral for the Guaranteed Obligations, if any;

(H) the election by, or on behalf of, any one or more of the Holders of Guaranteed Obligations, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(I) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code;

(J) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Holders of Guaranteed Obligations or the Administrative Agent for repayment of all or any part of the Guaranteed Obligations;

(K) the failure of any other guarantor of the Guaranteed Obligations to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof; or

(L) any other act or omission to act or delay of any kind by the Borrower, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any Holder of Guaranteed Obligations or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 4, constitute a legal or equitable discharge of any Guarantor's obligations hereunder except as provided in Section 5.

SECTION 5. Continuing Guarantee; Discharge Only Upon Payment In Full; Reinstatement In Certain Circumstances. Each of the Guarantors' obligations hereunder shall constitute a continuing and irrevocable guarantee of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until, with respect to each Guarantor, the earlier of (i) Facility Termination and (ii) such Guarantor's release herefrom pursuant to Section 9.14 of the Credit Agreement. If at any time any payment of any Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or is or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise (including pursuant to any settlement entered into by a Holder of Guaranteed Obligations in its discretion), each of the Guarantors' obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

SECTION 6. General Waivers; Additional Waivers.

(A) General Waivers. Each of the Guarantors irrevocably waives acceptance hereof, presentment, demand or action on delinquency, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Borrower, any other guarantor of the Guaranteed Obligations, or any other Person.

(B) Additional Waivers. Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;

(ii) (a) notice of acceptance hereof; (b) notice of any loans or other financial accommodations made or extended under the Loan Documents or the creation or existence of any Guaranteed Obligations; (c) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor's right to make inquiry of Administrative Agent and Holders of Guaranteed Obligations to ascertain the amount of the Guaranteed Obligations at any reasonable time; (d) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase such Guarantor's risk hereunder; (e) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents; (f) notice of any Default or Event of Default; and (g) all other notices (except if such notice is specifically required to be given to such Guarantor hereunder or under the Loan Documents) and demands to which each Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the other Holders of Guaranteed Obligations to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the other Holders of Guaranteed Obligations has or may have against, the other Guarantors or any third party, or against any collateral provided by the other Guarantors, or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully paid) of the other Guarantors or by reason of the cessation from any cause whatsoever of the liability of the other Guarantors in respect thereof;

(iv) (a) any rights to assert against the Administrative Agent and the other Holders of Guaranteed Obligations any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against the other Guarantors or any other party liable to the Administrative Agent and the other Holders of Guaranteed Obligations; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor; (c) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by reason of: the impairment or suspension of the Administrative Agent's and the other Holders of Guaranteed Obligations' rights or remedies against the other Guarantors; the alteration by the Administrative Agent and the other Holders of Guaranteed Obligations of the Guaranteed Obligations; any discharge of the other Guarantors' obligations to the Administrative Agent and the other Holders of Guaranteed Obligations by operation of law as a result of the Administrative Agent's and the other Holders of Guaranteed Obligations' intervention or omission; or the acceptance by the Administrative Agent and the other Holders of Guaranteed Obligations of anything in partial satisfaction of the Guaranteed Obligations; and (d) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Holders of Guaranteed Obligations; or (b) any election by the Administrative Agent and the other Holders of Guaranteed Obligations under Section 1111(b) of Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect (or any successor statute), to limit the amount of, or any collateral securing, its claim against the Guarantors.

SECTION 7. Subordination of Subrogation; Subordination of Intercompany Indebtedness; Status of Guaranteed Obligations.

(A) Subordination of Subrogation. Until Facility Termination, the Guarantors (i) shall have no right of subrogation with respect to such Guaranteed Obligations, (ii) waive any right to enforce any remedy which the Holders of Guaranteed Obligations now have or may hereafter have against the Borrower, any endorser or any guarantor of all or any part of the Guaranteed Obligations or any other Person, and (iii) waive any benefit of, and any right to participate in, any security or collateral given to the Holders of Guaranteed Obligations to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of the Borrower to the Holders of Guaranteed Obligations. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, each Guarantor hereby expressly and irrevocably until Facility Termination (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off that such Guarantor may have to the payment in full in cash of the Guaranteed Obligations and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations are indefeasibly paid in full in cash. Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the other Holders of Guaranteed Obligations and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the other Holders of Guaranteed Obligations and their respective successors and permitted assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 7(A).

(B) Subordination of Intercompany Indebtedness.

(i) Each Guarantor agrees that any and all claims of such Guarantor against the Borrower or any other Guarantor hereunder (each an "Obligor") owing to it ("Intercompany Indebtedness") shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations (other than indemnities and other contingent obligations as to which no claim has been made as at any time of determination); provided that, as long as no Event of Default has occurred and is continuing, such Guarantor may receive payments with respect to the Intercompany Indebtedness. In the event of any receivership, bankruptcy, reorganization, rearrangement, debtor's relief, or other insolvency proceeding (each, an "Insolvency Event") involving any Guarantor as debtor, any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to Intercompany Indebtedness of any Obligor to such Guarantor shall be paid or delivered directly to the Administrative Agent for application on any of the Guaranteed Obligations in accordance with the Credit Agreement until the Guaranteed Obligations (other than indemnities and other contingent obligations as to which no claim has been made as at any time of determination) have been paid in full in cash. Should any such payment or distribution be received by the applicable Guarantor upon or with respect to the Intercompany Indebtedness after any such Insolvency Event, such Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Holders of the Guaranteed Obligations and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Holders of the Guaranteed Obligations, in precisely the form received (except for the endorsement or assignment of the Guarantor where necessary), for application on any of the Guaranteed Obligations in accordance with the Credit Agreement until the Guaranteed Obligations (other than indemnities and other contingent obligations as to which no claim has been made as at any time of determination) have been paid in full in cash. If any such Guarantor fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same.

(ii) In the event of any Insolvency Event involving any Obligor as debtor, Administrative Agent shall have the right to prove and vote any claim under the Intercompany Indebtedness of such Obligor owing to any Guarantor and to receive directly from the receiver, trustee or other court custodian all dividends, distributions, and payments made in respect of the Intercompany Indebtedness until the Guaranteed Obligations (other than indemnities and other contingent obligations) have been paid in full in cash. Administrative Agent may apply any such dividends, distributions, and payments against the Guaranteed Obligations in accordance with the Credit Agreement.

(C) Status of Guaranteed Obligations. In the event that any Guarantor shall at any time issue or have outstanding any Subordinated Indebtedness, such Guarantor shall take all such actions (if any) as shall be reasonably necessary to cause the Guaranteed Obligations of such Guarantor to constitute "senior indebtedness" (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available to holders of such "senior indebtedness" under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Guaranteed Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any Subordinated Indebtedness Document to which any Guarantor is a party and are further given all such other designations as shall be required under the terms of such Subordinated Indebtedness Document such that the Administrative Agent and the Lenders may have and exercise any payment blockage or other remedies available to holders of "senior indebtedness" under the terms of such Subordinated Indebtedness Document.

SECTION 8. Contribution with Respect to Guaranteed Obligations.

(A) To the extent that any Guarantor shall make a payment under this Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following Facility Termination, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(B) As of any date of determination, the "Allocable Amount" of any Guarantor shall be equal to the excess of the fair saleable value of the property of such Guarantor over the total liabilities of such Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Guarantors as of such date in a manner to maximize the amount of such contributions.

(C) This Section 8 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 8 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(D) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(E) The rights of the indemnifying Guarantors against other Guarantors under this Section 8 shall be exercisable upon Facility Termination.

SECTION 9. Limitation of Guaranty. Notwithstanding any other provision of this Guaranty, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower under the Credit Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement or any other Loan Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Administrative Agent.

SECTION 11. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Section 9.01 of the Credit Agreement with respect to the Administrative Agent at its notice address therein and with respect to any Guarantor, in care of the Borrower at the address of the Borrower set forth in the Credit Agreement or such other address or telecopy number as such party may hereafter specify for such purpose by notice to the Administrative Agent in accordance with the provisions of such Section 9.01.

SECTION 12. No Waivers. No failure or delay by the Administrative Agent or any other Holder of Guaranteed Obligations in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Credit Agreement and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 13. Successors and Assigns. This Guaranty is for the benefit of the Administrative Agent and the other Holders of Guaranteed Obligations and their respective successors and permitted assigns; provided, except pursuant to a transaction permitted by the Credit Agreement, that no Guarantor shall have any right to assign its rights or obligations hereunder without the consent of all of the Lenders, and any such assignment in violation of this Section 13 shall be null and void; and in the event of an assignment of any amounts payable under the Credit Agreement or the other Loan Documents in accordance with the respective terms thereof, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty shall be binding upon each of the Guarantors and their respective successors and assigns.

SECTION 14. Changes in Writing. Other than in connection with the addition of additional Subsidiaries, which become parties hereto by executing a supplement hereto in the form attached as Annex I, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by each of the Guarantors and the Administrative Agent.

SECTION 15. GOVERNING LAW. THIS GUARANTY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

SECTION 16. CONSENT TO JURISDICTION; SERVICE OF PROCESS; JURY TRIAL; IMMUNITY.

(A) CONSENT TO JURISDICTION. EACH GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, BOROUGH OF MANHATTAN, AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE ISSUING BANK OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(B) WAIVER OF JURY TRIAL. EACH GUARANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 17. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 18. Taxes, Expenses of Enforcement, Etc.

(A) Taxes.

(i) Each payment by any Guarantor hereunder or under any promissory note or application for a Letter of Credit shall be made without withholding for any Taxes, unless such withholding is required by any law. If any Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Guarantor may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by the Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the applicable Recipient receives the amount it would have received had no such withholding been made.

(ii) In addition, such Guarantor shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(iii) As soon as practicable after any payment of Indemnified Taxes by any Guarantor to a Governmental Authority, such Guarantor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(iv) The Guarantors shall jointly and severally indemnify each Recipient for any Indemnified Taxes that are paid or payable by such Recipient in connection with any Loan Document (including amounts payable under this Section 18(A)) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 18(A) shall be paid within ten (10) days after the Recipient delivers to any Guarantor a certificate stating the amount of any Indemnified Taxes so payable by such Recipient. Such certificate shall be conclusive of the amount so payable absent manifest error. Such Recipient shall deliver a copy of such certificate to the Administrative Agent. In the case of any Lender making a claim under this Section 18(A) on behalf of any of its beneficial owners, an indemnity payment under this Section 18(A) shall be due only to the extent that such Lender is able to establish that, with respect to the applicable Indemnified Taxes, such beneficial owners supplied to the applicable Persons such properly completed and executed documentation necessary to claim any applicable exemption from, or reduction of, such Indemnified Taxes.

(v) By accepting the benefits hereof, each Lender agrees that it will comply with Section 2.17(e) of the Credit Agreement.

(B) Expenses of Enforcement, Etc. The Guarantors agree to reimburse the Administrative Agent and the other Holders of Guaranteed Obligations for any costs and out-of-pocket expenses (including attorneys' fees) paid or incurred by the Administrative Agent or any other Holder of Guaranteed Obligations in connection with the collection and enforcement of amounts due under the Loan Documents, including without limitation this Guaranty; *provided* that legal expenses shall be limited to a single counsel selected by the Administrative Agent and a single local counsel to the Administrative Agent in each relevant jurisdiction and a single special counsel to the Administrative Agent in each relevant specialty (in each case except allocated costs of in-house counsel) in connection with the foregoing.

SECTION 19. Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final and in whatever currency denominated) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Guarantor against any of and all of the Guaranteed Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 20. Financial Information. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all endorsers and/or other Guarantors of all or any part of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that none of the Holders of Guaranteed Obligations (including the Administrative Agent) shall have any duty to advise such Guarantor of information known to any of them regarding such condition or any such circumstances. In the event any Holder of Guaranteed Obligations (including the Administrative Agent), in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Holder of Guaranteed Obligations (including the Administrative Agent) shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Holder of Guaranteed Obligations (including the Administrative Agent), pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

SECTION 21. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 22. MERGER. THIS GUARANTY CONSTITUTES THE ENTIRE CONTRACT AMONG THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY AND ALL PREVIOUS AGREEMENTS AND UNDERSTANDINGS, ORAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF.

SECTION 23. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 24. Counterparts; Electronic Execution. This Guaranty may be executed in counterparts (and by different parties hereto on 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 by telecopy, email, .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 25. Termination of Guaranty. The obligations of any Guarantor under this Guaranty shall automatically terminate in accordance with Section 9.14 of the Credit Agreement.

SECTION 26. Transactions on the Restatement Date. The parties hereto agree that on the Effective Date, the following transactions shall be deemed to occur automatically, without further action by any party hereto:

(A) the Existing Guaranty shall be deemed to be amended and restated in its entirety in the form of this Guaranty;

(B) all Guaranteed Indebtedness (as defined in the Existing Guaranty) ("Existing Obligations"), including any such obligations that have accrued, but are not payable, as of the Effective Date, shall, to the extent not paid on the Effective Date, be deemed to be Guaranteed Obligations outstanding (and in the case of any accrued Existing Obligations that have accrued, but are not payable, as of the Effective Date, such accrued Existing Obligations shall be paid on the date or dates that such Existing Obligations were due under the Existing Credit Agreement); and

(C) the parties acknowledge and agree that this Guaranty and the other Loan Documents do not constitute a novation, payment and reborrowing or termination of the Existing Obligations and that all such Existing Obligations are in all respects continued and outstanding as Guaranteed Obligations under this Agreement with only the terms being modified from and after the effective date of this Guaranty as provided in this Guaranty and the other Loan Documents.

[Remainder of Page Intentionally Blank.]

IN WITNESS WHEREOF, each of the Initial Guarantors has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

[GUARANTORS]

By: _____
Name:
Title:

Acknowledged and Agreed
as of the date first written above:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

ANNEX I TO GUARANTY

FORM OF SUBSIDIARY GUARANTY SUPPLEMENT

Reference is hereby made to the Second Amended and Restated Subsidiary Guaranty (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty") made as of [ ], 2014, by and among [GUARANTORS TO COME] (the "Initial Guarantors" and, along with any additional Subsidiaries of the Borrower, which become parties thereto and together with the undersigned, the "Guarantors") in favor of the Administrative Agent, for the ratable benefit of the Holders of Guaranteed Obligations, under the Credit Agreement. Capitalized terms used herein and not defined herein shall have the meanings given to them in the Guaranty. By its execution below, the undersigned [NAME OF NEW GUARANTOR], a [corporation] [partnership] [limited liability company] (the "New Guarantor"), agrees to become, and does hereby become, a Guarantor under the Guaranty and agrees to be bound by such Guaranty as if originally a party thereto. By its execution below, the undersigned represents and warrants solely as to itself that the representations and warranties set forth in Sections 3.01, 3.02 and 3.03 of the Credit Agreement are true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty is true and correct in all respects), on and as of the date hereof, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty is true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects) on and as of such earlier date.

IN WITNESS WHEREOF, New Guarantor has executed and delivered this Subsidiary Guaranty Supplement as of this day of , 20 .

[NAME OF NEW GUARANTOR]

By: _____
Its:

EXHIBIT E-1

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated as of [ ], 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: , 20[ ]

EXHIBIT E-2

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated as of [ ], 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: , 20[ ]

EXHIBIT E-3

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated as of [ ], 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: , 20[ ]

EXHIBIT E-4

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated as of [ ], 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: , 20[ ]

EXHIBIT F-1

FORM OF BORROWING REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent
for the Lenders referred to below

10 South Dearborn, 19th Floor, Mailcode: IL1-0010

Chicago, Illinois 60603
Attention: April Yebd
Facsimile: 888-208-7168

With a copy to:

JPMorgan Chase Bank, N.A.

2200 Ross Avenue, 3rd Floor

Dallas, Texas, 75201

Attention: Brandon K. Watkins

Facsimile: 214-965–2044

Re: EAGLE MATERIALS INC.

[Date][1]

Ladies and Gentlemen:

Reference is hereby made to the Third Amended and Restated Credit Agreement dated as of [ ], 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Revolving Borrowing under the Credit Agreement, and in that connection the Borrower specifies the following information with respect to such Revolving Borrowing requested hereby:

1. Aggregate principal amount of Revolving Borrowing:[2]
2. Date of Revolving Borrowing (which shall be a Business Day): (the "Proposed Borrowing Date")
3. Type of Revolving Borrowing (ABR or Eurodollar):
4. Interest Period and the last day thereof (if a Eurodollar Borrowing):[3]
5. Location and number of the accounts to which proceeds of Revolving Borrowing are to be disbursed:

[Signature Page Follows]

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1 To be delivered (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, one (1) Business Day before the date of the proposed Borrowing; *provided* that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(d) may be given not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing.

2 Not less than applicable amounts specified in Section 2.02(c).

3 Which must comply with the definition of "Interest Period" and end not later than the Maturity Date.

The undersigned hereby represents and warrants that the conditions specified in Sections 4.02(a) and (b) of the Credit Agreement will be satisfied on the Proposed Borrowing Date.

Very truly yours,

EAGLE MATERIALS INC., as the Borrower

By: _____
Name:
Title:

EXHIBIT F-2

FORM OF INTEREST ELECTION REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent
for the Lenders referred to below

10 South Dearborn, 19th Floor, Mailcode: IL1-0010

Chicago, Illinois 60603
Attention: April Yebd
Facsimile: 888-208-7168

Re: EAGLE MATERIALS INC.

[Date][1]

Ladies and Gentlemen:

Reference is hereby made to the Third Amended and Restated Credit Agreement dated as of [ ], 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Eagle Materials Inc., a Delaware corporation (the "Borrower"), the Lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"), Issuing Bank and Swingline Lender, and the other agents party thereto. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Borrower hereby gives you notice pursuant to Section 2.08 of the Credit Agreement that it requests to [convert][continue] an existing Revolving Borrowing under the Credit Agreement, and in that connection the Borrower specifies the following information with respect to such [conversion] [continuation] requested hereby:

1. List date, Type, principal amount and Interest Period (if applicable) of existing Revolving Borrowing:[2]
2. Aggregate principal amount of resulting Revolving Borrowing:
3. Effective date of interest election (which shall be a Business Day):
4. Type of Revolving Borrowing (ABR or Eurodollar):
5. Interest Period and the last day thereof (if a Eurodollar Borrowing):[3]

[Signature Page Follows]

---

1 To be delivered by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election.

2 If different options are being elected with respect to different portions of the Borrowing listed, provide the information in lines 2, 4 and 5 for each resulting Borrowing.

3 Which must comply with the definition of "Interest Period" and end not later than the Maturity Date.

Very truly yours,

EAGLE MATERIALS INC., as the Borrower

By: _____
Name:
Title:

EXHIBIT G

FORM OF NOTE

[ ], 2014

FOR VALUE RECEIVED, the undersigned, EAGLE MATERIALS INC., a Delaware corporation (the "Borrower"), HEREBY UNCONDITIONALLY PROMISES TO PAY to [NAME OF LENDER] (the "Lender") the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to the "Credit Agreement" (as defined below) on the Maturity Date or on such earlier date as may be required by the terms of the Credit Agreement. Capitalized terms used herein and not otherwise defined herein are as defined in the Credit Agreement.

The Borrower promises to pay interest on the unpaid principal amount of each Loan made to it from the date of such Loan until such principal amount is paid in full at a rate or rates per annum determined in accordance with the terms of the Credit Agreement. Interest hereunder is due and payable at such times and on such dates as set forth in the Credit Agreement.

At the time of each Loan, and upon each payment or prepayment of principal of each Loan, the Lender shall make a notation either on the schedule attached hereto and made a part hereof, or in such Lender's own books and records, in each case specifying the amount of such Loan, the respective Interest Period thereof (in the case of Eurodollar Loans) or the amount of principal paid or prepaid with respect to such Loan, as applicable; provided that the failure of the Lender to make any such recordation or notation shall not affect the Obligations of the Borrower hereunder or under the Credit Agreement.

This Note is one of the notes referred to in, and is entitled to the benefits of, that certain Third Amended and Restated Credit Agreement dated as of [ ], 2014 by and among the Borrower, the financial institutions from time to time parties thereto as Lenders and JPMorgan Chase Bank, N.A., as Administrative Agent, Issuing Bank and Swingline Lender, and the other agents party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). The Credit Agreement, among other things, contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments of the principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

Demand, presentment, protest and notice of nonpayment and protest are hereby waived by the Borrower.

Whenever in this Note reference is made to the Administrative Agent, the Lender or the Borrower, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon and shall inure to the benefit of said successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for the Borrower.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

*****

EAGLE MATERIALS INC.

By: _____
Name: D. Craig Kesler
Title: Executive Vice President – Finance and Administration and Chief Financial Officer

Note

SCHEDULE OF LOANS AND PAYMENTS OR PREPAYMENTS

Date	Amount of Loan	Interest Period/Rate	Amount of Principal Paid or Prepaid	Unpaid Principal Balance	Notation Made By

Note

EXHIBIT 12.1

	Six Months Ended September 30	Fiscal Year Ended March 31,			
	2014	2014	2013	2012	2011
Earnings: (1)					
Earnings before income taxes	130,363	181,804	84,096	21,912	16,762
Add: Fixed charges	7,869	18,171	15,791	17,769	18,291
Add: Amortization of capitalized interest and FIN 48 Interest	616	1,177	945	(367)	(932)
Add: Cash distributions from equity method investments	19,375	37,750	28,500	23,250	24,500
Subtract: Income from equity method investments	(21,851)	(37,811)	(32,507)	(28,528)	(24,233)
Total Earnings	136,372	201,091	96,825	34,036	34,388
Fixed Charges: (2)					
Interest expense	7,607	17,646	15,467	17,530	17,995
Interest component of rent expense	262	525	324	239	296
Total Fixed Charges	7,869	18,171	15,791	17,769	18,291
Ratio of Earnings to Fixed Charges	**17.3x**	**11.1x**	**6.1x**	**1.9x**	**1.9x**

(1) Earnings represent earnings before income taxes and before income from equity method investments plus: (a) fixed charges; and (b) cash distributions from equity method investments.

(2) Fixed charges include: (a) interest expense, whether expensed or capitalized, less interest accrued for uncertain tax positions; and (b) the portion of operating rental expense which management believes is representative of the interest component of rent expense.

Exhibit 31.1

Certification of Periodic Report Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Steven R. Rowley, certify that:

1. I have reviewed this report on Form 10-Q of Eagle Materials Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures [as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)] and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 5, 2014

By: /s/ Steven R. Rowley
Steven R. Rowley
President and Chief Executive Officer

Exhibit 31.2

Certification of Periodic Report Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, D. Craig Kesler, certify that:

1. I have reviewed this report on Form 10-Q of Eagle Materials Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures [as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)] and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 5, 2014

By: /s/ D. Craig Kesler
D. Craig Kesler
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

Certification of Periodic Report Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Eagle Materials Inc. and subsidiaries (the "Company") on Form 10-Q for the period ended September 30, 2014 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Steven R. Rowley, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 5, 2014

By: /s/ Steven R. Rowley
Steven R. Rowley
President and Chief Executive Officer

Exhibit 32.2

Certification of Periodic Report Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Eagle Materials Inc. and subsidiaries (the "Company") on Form 10-Q for the period ended September 30, 2014 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, D. Craig Kesler, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 5, 2014

By: /s/ D. Craig Kesler
D. Craig Kesler
Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 95

MINE SAFETY DISCLOSURE

Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act contains reporting requirements regarding mine safety. The operation of our quarries is subject to regulation by the federal Mine Safety and Health Administration, or MSHA, under the Federal Mine Safety and Health Act of 1977, or the Mine Act. Set forth below is the required information regarding certain mining safety and health matters for the three month period ending September 30, 2014 for our facilities. In evaluating this information, consideration should be given to factors such as: (i) the number of citations and orders will vary depending on the size of the quarry, (ii) the number of citations issued will vary from inspector-to-inspector and mine-to-mine, and (iii) citations and orders can be contested and appealed, and in that process, may be reduced in severity and amount, and are sometimes dismissed.

Mine or Operating Name/MSHA Identification Number	Section 104 S&S Citations	Section 104(b) Orders	Section 104(d) Citations and Orders	Section 110(b)(2) Violations	Section 107(a) Orders	Total Dollar Value of MSHA Assessments Proposed	Total Number of Mining Related Fatalities	Received Notice of Pattern of Vio-lations Under Section 104(e) (yes/no)	Received Notice of Potential to Have Pattern Under Section 104(e) (yes/no)	Legal Actions Pending as of Last Day of Period	Legal Actions Initiated During Period	Legal Actions Resolved During Period
American Gypsum Company Albuquerque, NM (2900181)	0	0	0	0	0	$ 0	0	no	no	0	0	0
American Gypsum Company Duke, OK (3400256)	0	0	0	0	0	$ 0	0	no	no	0	0	0
American Gypsum Company Eagle, CO (0503997)	0	0	0	0	0	$ 0	0	no	no	0	0	0
Centex Materials Buda, TX (4102241)	0	0	0	0	0	$ 0	0	no	no	0	0	0
Central Plains Cement Company Sugar Creek, MO (2302171)	6	0	0	0	0	$ 6204	0	no	no	0	0	0
Central Plains Cement Company Tulsa, OK (3400026)	5	0	0	0	0	$ 28419	0	no	no	1(1)	1(1)	0
Illinois Cement Company LaSalle, IL (1100003)	1	0	0	0	0	$ 1697	0	no	no	0	0	0
Mountain Cement Company Laramie, WY (4800007)	4	0	0	0	0	$ 11776	0	no	no	5(2)	0	4(3)
Mountain Cement Company Laramie, WY (4800529)	0	0	0	0	0	$ 0	0	no	no	0	0	0
Nevada Cement Company Fernley, NV (2600015)	0	0	0	0	0	$ 0	0	no	no	0	1(1)	0
Northern White Sand LLC Utica, IL (1103253)	0	0	0	0	0	$ 100	0	no	no	0	0	0
Northern White Sand LLC Corpus Christi, TX (4105013)	0	0	0	0	0	$ 0	0	no	no	0	0	0
Talon Concrete and Aggregates Sugar Creek, MO (2302211)	4	0	0	0	0	$ 6633	0	no	no	0	0	0
Texas Lehigh Cement Company Buda, TX (4102781)	0	0	0	0	0	$ 0	0	no	no	0	0	2(4)
Western Aggregates Yuba, CA (0404950)	0	0	0	0	0	$ 0	0	no	no	0	0	0

(1) The legal action is a penalty contest.
(2) Of the 5 legal actions pending as of the last day of the period, 2 are penalty contests and 3 are pre-penalty contests.
(3) Of the 4 legal actions resolved, 2 are penalty contests and 2 are pre-penalty contests.
(4) The 2 legal actions were penalty contests.