

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:

HORSEHEAD HOLDING CORP., et al.,<sup>1</sup>

Debtors.

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)  
) Chapter 11

)  
) Case No. 16-10287 (CSS)

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) (Jointly Administered)

Objection Deadline: August 23, 2016 at 4:00 p.m. (prevailing Eastern Time)  
Hearing Date: August 30, 2016 at 10:00 a.m. (prevailing Eastern Time)

**DEBTORS’ MOTION FOR AN ORDER PURSUANT TO  
BANKRUPTCY CODE SECTIONS 105 & 363 AND BANKRUPTCY  
RULE 9019 APPROVING COMPROMISE OF CONTROVERSY WITH  
INDENTURE TRUSTEE, AD HOC SECURED NOTEHOLDERS  
COMMITTEE AND FIRST AMERICAN TITLE INSURANCE COMPANY**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby submit this motion (this “Motion”) for entry of an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to sections 105 and 363 of chapter 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement agreement and mutual releases as set forth on the agreement attached as Exhibit 1 to the Proposed Order (the “Settlement Agreement”)² by and between (i) certain of the Debtors, (ii) U.S. Bank, National Association, in its capacity as trustee and collateral agent (the “Indenture Trustee”) pursuant to

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Horsehead Holding Corp. (“Horsehead Holdings”) (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors’ principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meaning(s) ascribed to such terms in the Settlement Agreement or the *Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code*, dated July 12, 2016 [Docket No. 1309] (as further amended in accordance with the terms of the Settlement Agreement, the “Second Amended Plan”) and related disclosure statement [Docket No. 1310] (the “Second Amended Disclosure Statement”), as applicable.

that certain Indenture dated July 26, 2012, as supplemented by the First, Second, Third and Fourth Supplemental Indentures dated October 24, 2012, December 3, 2012, June 3, 2013, and July 29, 2013 (collectively, the “Indenture”), (iii) the ad hoc group of holders of the 10.50% Senior Secured Notes due 2017 (the “Secured Notes”) issued by Horsehead Holdings, certain of which holders are also the lenders under a senior secured superpriority debtor-in-possession financing facility (the “Ad Hoc Secured Noteholders Committee”),<sup>3</sup> and (iv) First American Title Insurance Company (collectively, “First American” and, together with the Indenture Trustee, the Debtors, and the Ad Hoc Secured Noteholders Committee, the “Parties,” and each, a “Party”), as set forth in the Proposed Order. The Settlement Agreement, *inter alia*, provides for the payment of \$3,000,000 by First American to an account designated by the Debtors on account of claims held by the Indenture Trustee relating to the Debtors’ zinc production facility in Mooresboro, North Carolina (the “Mooresboro Facility”), subject to the conditions described in the Settlement Agreement and as summarized below. The Settlement Agreement will also provide for mutual releases between the Debtors, First American, and the Indenture Trustee with respect to the matters that are governed by the Settlement Agreement, subject to the conditions set forth in the Settlement Agreement. In support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is

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<sup>3</sup> The Ad Hoc Committee of Secured Noteholders comprises: Greywolf Capital Management, LP, Hotchkis & Wiley Capital Management, Lantern Capital Partners, LP, MAK Capital, Saye Capital Management, and Wolverine Asset Management, LLC, which members hold in excess of 95% of the Secured Notes.

a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested hereby are sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

### **BACKGROUND**

2. On February 2, 2016 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 16, 2016, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee") in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code [Docket No. 129]. On May 14, 2016, the U.S. Trustee appointed an official committee of equity holders (the "Equity Committee") [Docket No. 930].

3. Together with their predecessors, the Debtors have operated in the zinc industry for more than 150 years and in the nickel-bearing waste industry for more than 30 years. Generally, the Debtors operate through three distinct business units: Horsehead Corporation and its subsidiaries (collectively, "Horsehead"), Zochem, Inc. ("Zochem"), and The International Metals Reclamation Company, LLC ("INMETCO"). Horsehead, Zochem, and INMETCO are each subsidiaries of Horsehead Holdings. Horsehead is a prominent recycler of electric arc furnace ("EAF") dust, a zinc-containing waste generated by North American steel "mini-mills," and in turn uses the recycled EAF dust to produce specialty zinc and zinc-based products.

Zochem, located in Brampton, Ontario, Canada, is a producer of zinc oxide. INMETCO is a recycler of nickel-bearing wastes and nickel-cadmium batteries, and a producer of nickel-chromium-molybdenum-iron remelt alloy for the stainless steel and specialty steel industries. Collectively, the Debtors hold a market-leading position in zinc production in the United States, zinc oxide production in North America, EAF dust recycling in North America, and are a leading environmental service provider to the American steel industry.

4. Additional information regarding the Debtors and these cases, including the Debtors' businesses, corporate structure, financial condition, and the reasons for and objectives of these cases, is set forth in the *Declaration of James M. Hensler in Support of First Day Motions* [Docket No. 16], the Second Amended Plan and Second Amended Disclosure Statement, each of which is incorporated herein by reference.

5. On April 14, 2016, the Debtors filed the *Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 604] and related disclosure statement [Docket No. 605] (the "Original Disclosure Statement"). On July 1, 2016, the Debtors filed the *Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1211] and related *Debtors' First Amended Disclosure Statement for the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1212]. On July 11, 2016, the Debtors filed the Second Amended Plan and the Second Amended Disclosure Statement.<sup>4</sup>

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<sup>4</sup> On July 15, 2016, the Debtors filed the solicited versions of the Second Amended Plan and Second Amended Disclosure Statement.

6. On July 11, 2016 the Court entered the *Order (I) Approving Debtors Second Amended Disclosure Statement for the Debtors Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code; (II) Approving Certain Dates Related to Plan Confirmation; (III) Approving Procedures for Soliciting, Voting, and Tabulating Votes on, and for Filing Objections to the Plan and Approving the Forms of Ballots and Notices; and (IV) Granting Related Relief* [Docket No. 1274] (the “Disclosure Statement Approval Order”). Pursuant to the Disclosure Statement Approval Order, a hearing on confirmation of the Second Amended Plan is scheduled to begin on August 30, 2016 at 10:00 a.m. prevailing Eastern Time.

#### **BACKGROUND RELATED TO SETTLEMENT AGREEMENT**

7. In July 2012, the Debtors completed a private placement of \$175 million in principal amount of the Secured Notes, and on June 3, 2013 and July 29, 2014, the Debtors issued in the aggregate \$30 million of additional Secured Notes. The Secured Notes are guaranteed by all of the Debtors other than Zochem. The Debtors used the proceeds from the Secured Notes for, among other things, construction of the Mooresboro Facility.

8. In connection with the closing of the \$175 million private placement in 2012, the Indenture Trustee was appointed trustee and collateral agent with respect to the Indenture and the Secured Notes.

9. In connection with the Secured Notes, the Debtors pledged various collateral to the Indenture Trustee for the benefit of all of the holders of the Secured Notes (the “Secured Noteholders”) including, without limitation, a first priority security interest in the real estate and improvements located at the Mooresboro Facility pursuant to a deed of trust recorded among the

land records of Rutherford County, North Carolina at Book 1135, page 798 (the “Deed of Trust”).

10. First American issued the “Lender Title Policies”<sup>5</sup> to the Indenture Trustee for the benefit of the holders of the Secured Notes (which includes the Secured Noteholders and any person or entity who was, is on the date hereof, or on the effective date of the termination of the Lender Title Policies will be an “Insured” as that term is defined in the Lender Title Policies).

11. First American also issued title policies to various of the Debtors (collectively, the “Owner Title Policies” and, together with the Lender Title Policies, the “Title Policies”).<sup>6</sup>

12. By letter dated February 19, 2016, the Indenture Trustee notified First American of a claim under the N.C. Lender Policy in connection with the Deed of Trust (the “Title Claim”). Pursuant to a letter issued on or about May 23, 2016, First American accepted, as of May 6, 2016, the Title Claim as a covered matter in accordance with the express and specific

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<sup>5</sup> The “Lender Title Policies” include: (a) that certain lender’s title insurance policy number NCS 552989 (L1) (the “N.C. Lender Policy”), with respect to certain tracts of land in Rutherford County, North Carolina, subject to the Deed of Trust and securing the indebtedness owed under the Secured Notes; (b) that certain lender’s title insurance policy number NCS 552989-1, with respect to certain tracts of land in Carbon County, Pennsylvania, subject to a mortgage/deed of trust securing the indebtedness owed under the Secured Notes; (c) that certain lender’s title insurance policy number NCS 552989-4(L), with respect to certain tracts of land in Lawrence County, Pennsylvania, subject to a mortgage/deed of trust securing the indebtedness owed under the Secured Notes; (d) that certain lender’s title insurance policy number NCS 552989-3 (L1), with respect to certain tracts of land in Roane County, Tennessee, subject to a deed of trust/mortgage securing the indebtedness owed under the Secured Notes; and (e) that certain lender’s title insurance policy number NCS 552989-2 (L1), with respect to certain tracts of land in Cook County, Illinois, subject to a deed of trust/mortgage securing the indebtedness owed under the Secured Notes.

<sup>6</sup> The “Owner Title Policies” include title policies issued to: (a) Horsehead Metal Products, Inc. that certain owner’s title insurance policy number NCS 552989, with respect to certain tracts of land in Rutherford County, North Carolina; (b) Horsehead Corporation that certain owner’s title insurance policy number NCS 552989-1(O), with respect to certain tracts of land in Carbon County, Pennsylvania; (c) The International Metals Reclamation Co., Inc. that certain owner’s title insurance policy number NCS 552989-4 (O), with respect to certain tracts of land in Lawrence County, Pennsylvania; (d) Horsehead Corporation that certain owner’s title insurance policy number 552989-3 (O), with respect to certain tracts of land in Roane County, Tennessee; and (e) Horsehead Corporation that certain owner’s title insurance policy number NCS 552989-2 (O), with respect to certain tracts of land in Cook County, Illinois.

terms of the N.C. Lender Policy, and First American retained DLA Piper, LLP (US) as counsel to handle the title matters associated with the Title Claim.

13. On May 6, 2016, the Creditors' Committee filed its *Motion for Standing for Entry of an Order Granting the Committee Standing to Commence and Prosecute an Action on Behalf of the Debtors' Estates Against U.S. Bank, National Association as Trustee and Collateral Agent for the Prepetition Senior Secured Noteholders* [Docket No. 882] (the "Creditors' Committee Standing Motion") seeking derivative standing to commence and prosecute certain claims and causes of action on behalf of the Debtors' estates (the "Creditors' Committee Standing Motion Claims") against the Indenture Trustee, and challenging the validity, extent, and priority of the security interests and liens in certain of the Debtors' assets allegedly held by the Indenture Trustee (including the mortgage on the Mooresboro Facility). By the Creditors' Committee Standing Motion, the Creditors' Committee also sought to void the Deed of Trust.<sup>7</sup>

14. On May 27, 2016, the Creditors' Committee filed its objection to the Original Disclosure Statement [Docket No. 872] (the "Creditors' Committee DS Objection"), which objection, among other things, repeated the allegations related to the Deed of Trust set forth in the Creditors' Committee Standing Motion.

15. Following negotiations, the Parties reached a resolution of all matters associated with the Chapter 11 Cases, including the Creditors' Committee Standing Motion, conditioned, in part, on the Settlement Agreement. This global resolution resulted in the filing of the Second Amended Plan and Second Amended Disclosure Statement.

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<sup>7</sup> The Creditors' Committee Standing Motion currently is being held in abeyance pending confirmation of the Second Amended Plan.

16. Pursuant to the Settlement Agreement, the Parties agree to fully and finally resolve the disputes raised in connection with the Chapter 11 Cases, the N.C. Lender Policy, the Deed of Trust, the Creditors' Committee Standing Motion, the Creditors' Committee DS Objection and/or the Title Claim, subject to the terms and conditions set forth in the Settlement Agreement (which includes releases and cancelations of title policies as set forth below in more detail).

### **SUMMARY OF SETTLEMENT AGREEMENT**<sup>8</sup>

17. As set forth in the Settlement Agreement, the primary terms of the Settlement Agreement are as follows:

- a. **First American Payment.** Within two (2) business days after the occurrence of the Payment Date (as defined below), First American shall transfer cash via wire transfer in the amount of \$3,000,000 to an escrow account maintained by a third-party escrow agent acceptable to the Parties, subject to the terms of an escrow agreement reasonably acceptable to the Parties to effectuate the transactions contemplated by the Settlement Agreement (the "First American Payment").
- b. **Disbursement of the First American Payment.** Contemporaneously with the Effective Date, the Parties shall each execute and deliver a fully executed written instruction letter to the agent of the escrow account instructing the escrow agent to immediately release the First American Payment via wire to an account designated by the Debtors.
- c. **Conditions to Payment Date.** The "Payment Date" shall be the first business day after all of the following conditions have been satisfied: (i) approval by the Bankruptcy Court of the Second Amended Disclosure Statement; (ii) entry by the Bankruptcy Court of the Confirmation Order (as defined in the Settlement Agreement); (iii) execution of the Settlement Agreement by all Parties; (iv) approval of the Settlement Agreement by the Bankruptcy Court pursuant to an order approving this Motion; and (v) receipt by First American from the Debtors (with a copy to all of the Parties to this Agreement) of written confirmation of the reasonably anticipated date upon which the Effective Date will occur, which shall not

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<sup>8</sup> The summary set forth in the Motion is only a summary. To the extent the summary conflicts with the actual terms of the Settlement Agreement, the actual terms of the Settlement Agreement shall control.



be issued longer than five (5) business days prior to such reasonably anticipated date.

- d. **Bankruptcy Actions.** Upon execution of the Settlement Agreement, each of the Parties shall take the following actions, as applicable, in connection with the Chapter 11 Cases: (i) the Debtors, the Ad Hoc Secured Noteholders Committee and the Indenture Trustee shall use commercially reasonable efforts to secure the agreement with the Creditors' Committee so that the Creditors' Committee Standing Motion shall remain in abeyance so long as the Settlement Agreement remains in effect; provided that upon the Effective Date, the Creditors' Committee Standing Motion shall be dismissed/withdrawn with prejudice; (ii) upon execution of the Settlement Agreement, the Debtors and the Ad Hoc Secured Noteholders Committee shall use reasonable efforts to cause this Motion to be filed; (iii) as soon as practical after the date on which the Settlement Agreement is executed by all Parties, the Debtors shall use reasonable efforts to cause the then-filed versions of the Disclosure Statement and Plan to be amended so as to conform such documents to the amended Disclosure Statement and amended Plan as set forth herein and in the Settlement Agreement; and (iv) the Debtors and the Ad Hoc Secured Noteholders Committee shall use commercially reasonable efforts to oppose and defend against any (a) objections to confirmation of the Second Amended Plan, (b) motions, applications, or any similar such request seeking a stay of the confirmation order, and (c) appeals of the confirmation order.
- e. **Cancellation of Title Policies.** Upon disbursement of the Settlement Payment from the escrow account, and without further action by any entity, person, or Party: (i) the Lender Title Policies (which includes the N.C. Lender Policy as well as the other Lender Title Policies) shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the Indenture Trustee, Secured Noteholders, Insureds, and/or their successors or assigns, as applicable; (ii) the Owner Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the Debtors and/or their successors or assigns (including the Indenture Trustee, the Insureds, and the Ad Hoc Committee of Secured Noteholders); (iii) the Debtors will insert in the confirmation order a provision which will be effective upon disbursement of the Settlement Payment from the escrow that confirms that the Owner Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the any of the Debtors and/or their successors or assigns (including the Indenture Trustee, the Insureds, the Ad Hoc Secured Noteholders Committee, and the Secured Noteholders).
- f. **Releases.** Mutual releases between (i) First American and certain related parties on the one hand, and (ii) the Indenture Trustee, Secured Noteholders, Ad Hoc Secured Noteholders Committee and the Debtors and certain related parties on the other, from all claims related in any way

to these Chapter 11 Cases, the Title Policies, the Deed of Trust, the Creditors' Committee Standing Motion and/or the Title Claim, with certain exceptions (the "Mutual Releases") as described more fully in the Settlement Agreement.

### **RELIEF REQUESTED**

18. By and through the Motion, the Debtors seek entry of an order in the form attached hereto as Exhibit A, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), (i) approving the Settlement Agreement, which provides *inter alia*, for the payment of \$3,000,000 to an account designated by the Debtors, the cancellation of the Title Policies and approval of the Mutual Releases, (ii) determining that the Settlement Agreement and the requested order are fair and reasonable to the Debtors' Estates and their creditors, including the current, former and future holders of the Secured Notes, and (iii) that the Settlement Agreement was entered into by the Indenture Trustee prudently and, as set forth in the Settlement Agreement, with the consent and direction of over 90% of the Secured Notes ("Majority Holders").

### **BASIS FOR RELIEF REQUESTED**

19. Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the bankruptcy court may approve a compromise or settlement." Compromises are favored in the bankruptcy context "[t]o minimize litigation and expedite the administration of a bankruptcy estate." *Martin v. Myers (In re Martin)*, 91 F. 3d 389, 393 (3d Cir. 1996). The Supreme Court has recognized that "in administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims in which there are substantial and reasonable doubts." *Protective Comm. for Indep. Stockholders of*

*TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (applying the former Bankruptcy Act).

20. In determining the fairness of a proposed compromise, the court should:

Form an educated estimate of the complexity, expense and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

*Protective Comm.*, 390 U.S. at 414, 424-25.

21. The Third Circuit, applying *Protective Committee* in the context of a settlement pursuant to Bankruptcy Rule 9019(a), has set forth four factors to be considered:

- (i) the probability of success in litigation;
- (ii) the likely difficulties of collection;
- (iii) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (iv) the paramount interest of the creditors.

*Martin*, 91 F.3d at 393; *see also In re Marvel Entm't Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (whether a court should approve a settlement under Bankruptcy Rule 9019(a) depends on several factors, including the probability of success in the litigation, the complexity of the litigation, the attendant expense and delay, and the interests of the creditors); *In re Geller*, 74 B.R. 685, 688 (Bankr. E.D. Pa. 1987) (generally, a settlement will be approved as long as it clears a threshold of reasonableness); *Official Unsecured Creditors' Comm. v. Pennsylvania*

*Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.)*, 150 B.R. 595, 598 (E.D. Pa. 1992), *aff'd without opinion*, 8 F. 3d 812 (3d Cir. 1993) (settlement must not fall below the lowest level in the range of reasonableness).

22. Approval of a compromise is within the “sound discretion” of the bankruptcy court. *Jeffrey v. Desmond*, 70 F. 3d 183, 185 (1st Cir. 1995). The bankruptcy court must determine whether the proposed compromise and the settlement are in the “best interests of the estate.” See *In the Matter of Energy Coop., Inc.*, 886 F. 2d 921, 927 (7th Cir. 1989). The bankruptcy court should not substitute its judgment for that of a trustee or debtor in possession. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F. 2d 1303, 1311 (5th Cir. 1985); *In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). The bankruptcy court is not to decide the numerous questions of law or fact raised in the litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. See *In re Penn Trans. Co.*, 596 F. 2d 1102, 1114 (3d Cir. 1979); *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F. 2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983).

23. A settlement of claims and causes of action by a debtor in possession constitutes a use of property of the estate. See *Northview Motors, Inc. v. Chrysler Motors Corp.*, 186 F.3d 346, 350-51 (3d Cir. 1999). If a settlement is outside of the ordinary course of business of the debtor, it requires approval of the bankruptcy court pursuant to section 363(b) of the Bankruptcy Code. See *id.*; see also *Martin*, 91 F.3d at 395 n.2 (“Section 363 of the Code is the substantive provision requiring a hearing and court approval; Bankruptcy Rule 9019 sets forth the procedure

for approving an agreement to settle or compromise a controversy.”). Courts normally defer to the debtor’s business judgment so long as there is a legitimate business justification. *See id.*; *see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999) (trustee need only have a “sound business purpose” to justify use of estate property pursuant to section 363(b)). The Debtors submit that approval of the Settlement Agreement under section 363 of the Bankruptcy Code is warranted here.

24. The Motion should also be approved pursuant to section 105 of the Bankruptcy Code, which authorizes the Court “to issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.” *See* 11 U.S.C. § 105(a).

25. The Debtors believe the Settlement Agreement is fair and reasonable and is in the best interests of the Debtors’ estates and creditors, and should be approved pursuant to Bankruptcy Rule 9019. Indeed, the Settlement Agreement is the product of extensive, active, good-faith discussions and arms’ length bargaining among the Parties. For the reasons outlined below, the Debtors believe that the Settlement Agreement represents a highly attractive outcome for the Debtors’ estates.

26. First, the Settlement Agreement provides funding which is an integral part of the resolution of the Creditors’ Committee Standing Motion and other open issues in connection with the Chapter 11 Cases. Resolution of these issues has permitted the Debtors to propose the Second Amended Plan, which pursuant to the terms of the Settlement Agreement is consensual as to the Parties.

27. As noted above, by the Creditors' Committee Standing Motion and the attached complaint, the Creditors' Committee alleged defects in certain liens including that (a) the Deed of Trust securing the real property at the Mooresboro Facility is invalid and unenforceable under North Carolina state law because it includes numerous errors, Creditors' Committee Standing Motion ¶ 44, and (b) the mortgage recorded for the Debtors' Palmerton, Carbon County, Pennsylvania facility does not list certain parcels of the facility, Creditors' Committee Standing Motion ¶ 54. The Creditors' Committee also asserted certain challenges regarding the validity, enforceability, priority and extent of the Indenture Trustee's pledge of the stock of one of the Debtors. Creditors' Committee Standing Motion ¶ 55-59. The Creditors' Committee alleged that these and other issues represent colorable claims challenging the validity, enforceability, priority and extent of the alleged liens.

28. Based in part upon the issues raised by the Creditors' Committee Standing Motion, the Indenture Trustee and Secured Noteholders have submitted the Title Claim to First American pursuant to the terms of the Lender Title Policies. While the Debtors also have coverage through First American pursuant to the terms of the Owner Title Policies, the Debtors are not currently aware of any claims they hold against First American. Thus, the Settlement Agreement, in the first instance, resolves the claims of the Indenture Trustee and Secured Noteholders against First American.

29. Moreover, the Settlement Agreement facilitates an integral contribution by First American to the broader settlement set forth in the Second Amended Plan. As noted above, the Settlement Agreement provides a mechanism for the direct contribution of \$3 million which,

pursuant to the Second Amended Plan, shall be included in the settlement fund directly benefiting the general unsecured creditors in these cases to resolve outstanding issues with the Creditors' Committee, including those set forth in the Creditors' Committee Standing Motion. As such, the Settlement Agreement is a necessary component of the broader settlement with the Creditors' Committee and, thus, to the Debtors' emergence from the Chapter 11 Cases.

30. Negotiations over the disputes between the Debtors, the Creditors' Committee, the Indenture Trustee, and the Secured Noteholders have been ongoing for several months, and the Parties have finally reached an agreement that is embodied in the Settlement Agreement and Second Amended Plan. As described above, the Settlement Agreement avoids the costs and delay that would be required to litigate all issues between the Parties as well as litigation with the Creditors' Committee regarding the Second Amended Plan and the Creditors' Committee Standing Motion.

31. Accordingly, the First American Payment resolves any claims by the Indenture Trustee or the Secured Noteholders against First American and, as an integral part of the broader settlement among parties in interest described in the Second Amended Plan and Second Amended Disclosure Statement, the Settlement Agreement provides for, among other terms: (a) funding of a payment to be utilized under the terms of the Second Amended Plan to fund a settlement for the benefit of the Debtors' unsecured creditors; and (b) releases by the Debtors' estates of potential claims under the Owners' Policies (as noted above, the Debtors are not aware of any such claims). *See Northview Motors*, 186 F.3d at 350 (settling a claim against a third party constitutes a sale of the claim under section 363 and subject to court approval). For all the

reasons set forth above, the Debtors, in an exercise of their sound business judgment, submit that the Settlement Agreement is fair, reasonable, and appropriate and should be approved by this Court.

32. Accordingly, the Settlement Agreement should be approved by the Court under sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

**NOTICE**

33. The Debtors will provide notice of this Motion to the following parties or their respective counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Creditors' Committee; (c) counsel to the Equity Committee; (d) counsel to Macquarie Bank Limited; (e) the Indenture Trustee; (f) each of the brokers, bankers, dealers and other agents or nominees listed on Depository Trust Company's first tier participation list for the Secured Notes;<sup>9</sup> (g) the indenture trustee under the Debtors' 9.00% senior unsecured notes; (h) the indenture trustee under the Debtors' 3.80% convertible senior notes; (i) Banco Bilbao Vizcaya Argentaria, S.A.; (j) counsel to PNC Bank, National Association; (k) counsel for the Ad Hoc Secured Noteholders Committee; (l) the agent to the DIP Facility; (m) Richter Advisory Group Inc. in its capacity as information officer in the Debtors' foreign recognition proceedings; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. A copy of this Motion is also available on the website of the Debtors' notice and claims agent at <http://dm.epiq11.com/Horsehead>. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

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<sup>9</sup> Notice of this Motion and the Motion itself will be given with instructions to forward such documents to the beneficial holders of the Secured Notes.



**NO PRIOR REQUEST**

34. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter the order, substantially in the form attached in the Proposed Order, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Wilmington, Delaware  
Dated: August 1, 2016

*/s/ Laura Davis Jones*

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*Co-Counsel for the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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**Objection Deadline: August 23, 2016 at 4:00 p.m. (prevailing Eastern Time)  
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WITH INDENTURE TRUSTEE, AD HOC SECURED NOTEHOLDERS  
COMMITTEE AND FIRST AMERICAN TITLE INSURANCE COMPANY**

TO: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Creditors’ Committee; (c) counsel to the Equity Committee; (d) counsel to Macquarie Bank Limited; (e) the Indenture Trustee; (f) each of the brokers, bankers, dealers and other agents or nominees listed on Depository Trust Company’s first tier participation list for the Secured Notes;<sup>2</sup> (g) the indenture trustee under the Debtors’ 9.00% senior unsecured notes; (h) the indenture trustee under the Debtors’ 3.80% convertible senior notes; (i) Banco Bilbao Vizcaya Argentaria, S.A.; (j) counsel to PNC Bank, National Association; (k) counsel for the Ad Hoc Secured Noteholders Committee; (l) the agent to the DIP Facility; (m) Richter Advisory Group Inc. in its capacity as information officer in the Debtors’ foreign recognition proceedings; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE THAT On August 1, 2016, the above captioned debtors and debtors in possession (collectively, the “Debtors”) filed the attached *Debtors’ Motion for an Order Pursuant to Bankruptcy Code Sections 105 & 363 and Bankruptcy Rule 9019 Approving Compromise of Controversy with Indenture Trustee, Ad Hoc Secured Noteholders Committee*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors’ principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

<sup>2</sup> Notice of this Motion and the Motion itself will be given with instructions to forward such documents to the beneficial holders of the Secured Notes.

*and First American Title Insurance Company* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE THAT each of the brokers, bankers, dealers and other agents or nominees listed on the Depository Trust Company’s first tier participation list for the Secured Notes is instructed to forward a copy of this Notice and the Motion to the beneficial holders of the Secured Notes.

PLEASE TAKE FURTHER NOTICE THAT OBJECTIONS AND RESPONSES TO THE MOTION, IF ANY, MUST BE IN WRITING AND FILED WITH THE BANKRUPTCY COURT NO LATER THAN **4:00 P.M., PREVAILING EASTERN TIME, ON AUGUST 23, 2016**. At the same time, you must also serve a copy of the response or objection upon: (a) the Debtors, 4955 Steubenville Pike, Suite 405, Pittsburgh, PA 15205, Attn: Gary R. Whitaker; (b) co-counsel to the Debtors: Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones, Esq.; (c) counsel to the Wilmington Trust, N.A., Loeb &Loeb LLP, 345 Park Avenue, New York, New York 10154, Attn: Walter H. Curchack, Esq.; (d) counsel to Macquarie Bank Limited, (i) Stroock & Stroock & Lavan LLP, Attn: Mark A. Speiser, Esq.; and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Matthew B. Lunn, Esq.; (e) counsel to the Cantor Fitzgerald Securities as agent for the DIP Facility, (i) Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103, Attn.: Nathan Z. Plotkin, Esq.; and (ii) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899-1150, Attn: William P. Bowden, Esq.; (f) counsel for the Ad Hoc Secured Noteholders Committee, (i) Akin Gump Strauss Hauer & Held, One Bryant Park, New York, NY 10036,

Attn: Michael S. Stamer, Esq., and Meredith A. Lahaie, Esq., and (ii) Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899-1150, Attn: William P. Bowden, Esq.; (g) counsel for PNC Bank, National Association, (i) Blank Rome LLP, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103, Attn: Michael C. Graziano, Esq., and (ii) Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, DE 19801, Attn: Regina Stango Kelbon, Esq.; (h) counsel to the Creditors' Committee, (i) Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, New Jersey 07068, Attn: Bruce Buechler, Esq.; and (ii) Drinker Biddle & Reath LLP, 222 Delaware Avenue, Suite 1400, Wilmington, Delaware 19801, Attn: Howard A. Cohen, Esq.; (i) counsel to Cetus Capital, LLC, (i) Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019, attn.: Scott K. Charles, SKCharles@wlrk.com, and Neil K. Chatani, NKChatani@wlrk.com; and (ii) Saul Ewing LLP, 222 Delaware Avenue, Suite 1200, P.O. Box 1266, Wilmington, DE 19899, attn.: Mark Minuti, mminuti@saul.com; (j) Counsel to the Indenture Trustee, Dorsey & Whitney LLP, 51 W. 52nd Street, New York, New York 10019-6119, attn. Eric Lopez Schnabel, Esq. schnabel.eric@dorsey.com and (k) Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Timothy J. Fox, Jr., Esq.

**A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI AT THE UNITED STATES BANKRUPTCY COURT, 824 MARKET STREET, FIFTH FLOOR, COURTROOM #6, WILMINGTON, DELAWARE 19801 ON AUGUST 30, 2016 AT 10:00 A.M. PREVAILING EASTERN TIME**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Wilmington, Delaware  
Dated: August 1, 2016

*/s/ Laura Davis Jones*

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Laura Davis Jones (DE Bar No. 2436)

James E. O'Neill (DE Bar No. 4042)

Joseph M. Mulvihill (DE Bar No. 6061)

**PACHULSKI STANG ZIEHL & JONES LLP**

919 North Market Street, 17th Floor

P.O. Box 8705

Wilmington, Delaware 19899-8705 (Courier 19801)

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[joneill@pszjlaw.com](mailto:joneill@pszjlaw.com)

[jmulvihill@pszjlaw.com](mailto:jmulvihill@pszjlaw.com)

*Co-Counsel for the Debtors and Debtors in Possession*

# **EXHIBIT A**

## **Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
HORSEHEAD HOLDING CORP., <u>et al.</u> , <sup>1</sup>	)	Case No. 16-10287 (CSS)
Debtors.	)	(Jointly Administered)
	)	Docket Ref. No. ____

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105 & 363  
AND BANKRUPTCY RULE 9019 APPROVING COMPROMISE OF  
CONTROVERSY WITH INDENTURE TRUSTEE, AD HOC  
SECURED NOTEHOLDER COMMITTEE AND FIRST AMERICAN**

Upon consideration of the motion (the “Motion”)<sup>2</sup> pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) approving the compromise of controversy by and among (i) the Debtors, (ii) U.S. Bank, National Association, in its capacity as trustee and collateral agent (the “Indenture Trustee”) pursuant to an Indenture dated July 26, 2012, as supplemented by the First, Second, Third and Fourth Supplemental Indentures dated October 24, 2012, December 3, 2012, June 3, 2012, and July 29, 2012 (collectively, the “Indenture”), (iii) the ad hoc group of holders of the 10.50% Senior Secured Notes due 2017 issued by Horsehead Holding Corp. (“Horsehead Holdings”), certain of which holders are also the lenders under a senior secured superpriority debtor-in-possession financing facility (the “Ad Hoc Secured Noteholders Committee”),<sup>3</sup> and (iv) First American Title Insurance Company

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<sup>1</sup>The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors’ principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning attributed in the Motion.

<sup>3</sup> The Ad Hoc Committee of Secured Noteholders comprises: Greywolf Capital Management, LP, Hotchkis & Wiley Capital Management, Lantern Capital Partners, LP, MAK Capital, Saye Capital Management, and Wolverine Asset

(collectively, "First American," and, together with Indenture Trustee, Debtors, and the Ad Hoc Secured Noteholders Committee, the "Parties," and each, a "Party"); and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is GRANTED.
2. The terms of the Settlement Agreement attached hereto as Exhibit 1 are APPROVED in their entirety pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.
3. The Settlement Agreement and this Order are fair and reasonable to all current, former and future holders of Secured Notes, and the Settlement Agreement was entered into by the Indenture Trustee prudently and at the direction of the Majority Holders. The Settlement Agreement and this Order, and the Indenture Trustee's entering into the Settlement Agreement, are consistent with and not in violation of the Indenture or applicable law, including the Trust Indenture Act of 1939. The Settlement Agreement is binding upon all current, former and future holders of Secured Notes including, without limitation, the Insureds.
4. The Parties are hereby authorized to take such additional actions or execute such additional documents as are necessary or appropriate to implement the terms of the Settlement Agreement.
5. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062, or 9014, any other Bankruptcy Rule, this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of effectiveness or execution of this Order.

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Management, LLC, which members hold in excess of 95% of the Secured Notes.



6. The Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of the Settlement Agreement or this Order.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
The Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

**Exhibit 1**

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this date of July 8, 2016, by and among (i) U.S. Bank National Association, solely in its capacity as trustee and collateral agent (the “**Indenture Trustee**”) pursuant to an Indenture dated July 26, 2012, as supplemented by First, Second, Third and Fourth Supplemental Indentures dated October 24, 2012, December 3, 2012, June 3, 2013, and July 29, 2014 (collectively, the “**Indenture**”), (ii) the ad hoc group of holders of certain of the 10.50% Senior Secured Notes due 2017 issued by Horsehead Holding Corp. (“**Horsehead Holdings**”),<sup>1</sup> certain of which holders are also the lenders under a senior secured superpriority debtor-in-possession financing facility (the “**Ad Hoc Secured Noteholders Committee**”),<sup>2</sup> (iii) Horsehead Holdings, Horsehead Corporation, Horsehead Metal Products, LLC, and The International Metals Reclamation Company, LLC (collectively, the “**Debtors**”), and (iv) First American Title Insurance Company (“**First American**,” and, together with Indenture Trustee, Debtors, and Ad Hoc Secured Noteholders Committee, the “**Parties**,” and each, a “**Party**”).

### Recitals

**WHEREAS**, in July 2012, the Debtors completed a private placement of \$175 million in principal amount of 10.50% senior secured notes due 2017 (the “**Secured Notes**” and holders of such notes, the “**Secured Noteholders**”), and on June 3, 2013 and July 29, 2014, the Debtors issued in the aggregate \$30 million of additional Secured Notes. The Secured Notes are guaranteed by all of the Debtors. The Debtors used the proceeds from the Secured Notes for, among other things, construction of a zinc production facility in Mooresboro, North Carolina (the “**Mooresboro Facility**”).

**WHEREAS**, in connection with the closing of the \$175 million private placement in 2012, the Indenture Trustee was appointed trustee and collateral agent with respect to the Indenture and the Secured Notes.

**WHEREAS**, in connection with the Secured Notes, the Debtors pledged various collateral to the Indenture Trustee for the benefit of the all of the holders of the Secured Notes including, without limitation, a first priority security interest in the real estate and improvements located at the Mooresboro Facility pursuant to a deed of trust recorded among the land records of Rutherford County, North Carolina at Book 1135, page 798 (the “**Deed of Trust**”).

**WHEREAS**, First American issued to the Indenture Trustee for the benefit of the holders of the Secured Notes (which includes the Secured Noteholders, the Ad Hoc Committee of Secured Noteholders, and any person or entity who was, is on the date hereof, or on the effective date of the termination of the Lender Title Policies will be an “Insured” as that term is defined in

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<sup>1</sup> Capitalized terms used and not otherwise defined herein shall have the meaning(s) ascribed to such terms in the *Debtors’ First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code*, dated July 1, 2016 [Docket No. 1211] (the “**July Plan**”) and related disclosure statement (the “**July Disclosure Statement**”).

<sup>2</sup> The Ad Hoc Committee of Secured Noteholders comprises: Greywolf Capital Management, LP, Hotchkis & Wiley Capital Management, Lantern Capital Partners, LP, MAK Capital, Saye Capital Management, and Wolverine Asset Management, LLC, which members hold in excess of 95% of the Secured Notes.

the Lender Title Policies): (a) that certain lender's title insurance policy number NCS 552989 (L1) (the "**N.C. Lender Policy**"), with respect to certain tracts of land in Rutherford County, North Carolina, subject to the Deed of Trust and securing the indebtedness owed under the Secured Notes; (b) that certain lender's title insurance policy number NCS 552989-1, with respect to certain tracts of land in Carbon County, Pennsylvania, subject to a mortgage/deed of trust securing the indebtedness owed under the Secured Notes; (c) that certain lender's title insurance policy number NCS 552989-4(L), with respect to certain tracts of land in Lawrence County, Pennsylvania, subject to a mortgage/deed of trust securing the indebtedness owed under the Secured Notes; (d) that certain lender's title insurance policy number NCS 552989-3 (L1), with respect to certain tracts of land in Roane County, Tennessee, subject to a deed of trust/mortgage securing the indebtedness owed under the Secured Notes; and (e) that certain lender's title insurance policy number NCS 552989-2 (L1), with respect to certain tracts of land in Cook County, Illinois, subject to a deed of trust/mortgage securing the indebtedness owed under the Secured Notes (collectively, the foregoing lender title policies shall be referred to herein as the "**Lender Title Policies**").

**WHEREAS**, First American issued to (a) Horsehead Metal Products, Inc. that certain owner's title insurance policy number NCS 552989, with respect to certain tracts of land in Rutherford County, North Carolina; (b) Horsehead Corporation that certain owner's title insurance policy number NCS 552989-1(O), with respect to certain tracts of land in Carbon County, Pennsylvania; (c) The International Metals Reclamation Co., Inc. that certain owner's title insurance policy number NCS 552989-4 (O), with respect to certain tracts of land in Lawrence County, Pennsylvania; (d) Horsehead Corporation that certain owner's title insurance policy number 552989-3 (O), with respect to certain tracts of land in Roane County, Tennessee; and (e) Horsehead Corporation that certain owner's title insurance policy number NCS 552989-2 (O), with respect to certain tracts of land in Cook County, Illinois (collectively, the "**Owner Title Policies**," and, together with the Lender Title Policies, the "**Title Policies**").

**WHEREAS**, on February 2, 2016, the Debtors filed for bankruptcy protection under chapter 11, with such bankruptcy cases currently pending in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), the cases being jointly administered in Case No. 16-10287 (collectively, the "**Chapter 11 Cases**").

**WHEREAS**, on March 3, 2016, the Bankruptcy Court entered that certain Final Order (I) Authorizing the Postpetition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (II) Authorizing the Postpetition Use of Cash Collateral, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B), and (V) Granting Related Relief [Docket No. 252] (the "**Final DIP Order**").

**WHEREAS**, on May 6, 2016, the Official Committee of Unsecured Creditors (the "**UCC**") filed its Motion for Standing for Entry of an Order Granting the Committee Standing to Commence and Prosecute an Action on Behalf of the Debtors' Estates Against U.S. Bank, National Association as Trustee and Collateral Agent for the Prepetition Senior Secured Noteholders (the "**Standing Motion**"). By the Standing Motion, the UCC seeks to, among other things, void the Deed of Trust.

**WHEREAS**, by letter dated February 19, 2016, the Insured notified First American of a claim under the N.C. Lender Policy in connection with the Deed of Trust (the “**Title Claim**”).

**WHEREAS**, pursuant to a letter issued on or about May 23, 2016, First American accepted as of May 6, 2016, the Title Claim as a covered matter in accordance with the express and specific terms of the N.C. Lender Policy and First American retained Dorsey & Whitney, LLP as counsel to handle the title matters associated with the Title Claim (“**Retained Counsel**”).

**WHEREAS**, on April 14, 2016, the Debtors filed the *Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 604] (the “**Original Plan**”) and related disclosure statement [Docket No. 605] (the “**Original Disclosure Statement**”).

**WHEREAS**, various parties objected to the Original Disclosure Statement and Original Plan, including the UCC.

**WHEREAS**, the Debtors, UCC, and Ad Hoc Committee of Secured Noteholders (both in their capacity as prepetition secured noteholders and as debtor-in-possession lenders) have reached a resolution of all matters associated with the Chapter 11 Cases, including the Standing Motion, conditioned, in part, on this Agreement which resulted in the filing of the July Plan and July Disclosure Statement and which will result in an amended disclosure statement and joint plan of reorganization that are acceptable to the Ad Hoc Secured Noteholders Committee, the Indenture Trustee and First American to the extent such plan and disclosure statement materially and adversely impacts the rights of First American and/or the Indenture Trustee as set forth herein.

**WHEREAS**, during a hearing held on July 7, 2016, the Bankruptcy Court indicated that it would approve the July Disclosure Statement, as amended and submitted by the Debtors under certification of counsel.

**WHEREAS**, the hearing to consider the Amended Joint Plan (as defined below) is scheduled for August 30 and 31, 2016.

**WHEREAS**, the Parties agree to fully and finally resolve the disputes raised in the Chapter 11 Cases, the N.C. Lender Policy, the Deed of Trust, the Standing Motion, and/or the Title Claim pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the promises, terms, conditions, and mutual releases contained herein, the Parties stipulate and agree:

1. **Recitals.** The foregoing recitals are hereby incorporated into and made an express part of this Agreement.
2. **Additional Definitions.**

“**9019 Order**” means an order entered by the Bankruptcy Court that is reasonably acceptable to the Parties approving this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, including, without limitation, provisions in such order

that shall bind the Insureds to applicable provisions of this Agreement (including without limitation, the release and the termination of the Title Policies provisions contained in this Agreement below).

“**Amended Joint Plan**” means the Amended Joint Plan of Reorganization that is acceptable to the Ad Hoc Secured Noteholders Committee, the Indenture Trustee and First American to the extent such plan materially and adversely impacts the rights of First American and/or the Indenture Trustee and that is confirmed by the Bankruptcy Court. For the avoidance of doubt, the Amended Joint Plan will include, among other things, releases in favor of First American by the Parties and all other parties-in-interest as set forth therein.

“**Amended Disclosure Statement**” means an Amended Disclosure Statement that is acceptable to the Ad Hoc Secured Noteholders Committee, the Indenture Trustee and First American to the extent such disclosure statement materially and adversely impacts the rights of First American and/or the Indenture Trustee, and that is approved by the Bankruptcy Court.

“**Confirmation Order**” means an order entered by the Bankruptcy Court that is acceptable to the Ad Hoc Secured Noteholders Committee, the Indenture Trustee and First American solely to the extent such order materially and adversely impacts the rights of First American and/or the Indenture Trustee and that is entered by the Bankruptcy Court. For the avoidance of doubt, the Confirmation Order will include, among other things, confirmation that upon the Escrow Disbursement (as defined herein), the Title Policies shall terminate and be null and void, and confirmation that the Insureds are bound by all provisions of this Agreement including, without limitation, the release and the termination of the Title Policies provisions contained in this Agreement below.

“**Effective Date**” means the Effective Date as defined in the Amended Plan.

“**Insured**” means collectively, the Indenture Trustee, Secured Noteholders, and any person or entity who was, is on the date hereof, or on the effective date of the termination of the Lender Title Policies will be an “Insured” as that term is defined in the Lender Title Policies.

### 3. **Payments.**

a. **Escrow Payment.** Within two (2) business days of the Payment Date (as defined herein), First American shall transfer cash via wire transfer in the amount of \$3,000,000 (the “**First American Payment**”) to an escrow account (the “**Escrow**”) maintained by a third-party escrow agent (the “**Escrow Agent**”) acceptable to the Parties, subject to the terms of an escrow agreement (which will be executed by the Parties and the Escrow Agent) (the “**Escrow Agreement**”) reasonably acceptable to the Parties to effectuate the transactions contemplated by this Agreement.

b. **Disbursement of First American Payment.** Contemporaneously with the Effective Date, the Parties shall each execute and deliver a fully executed written instruction letter (the “**Instruction Letter**”) to the Escrow Agent instructing the Escrow

Agent to immediately release the First American Payment from the Escrow via wire transfer to an account designated by the Debtors (the “**Escrow Disbursement**”). The Parties agree to use their commercially reasonable efforts to execute the Escrow Agreement and reach agreement on the form of the Instruction Letter (which will be an exhibit to the Escrow Agreement) no later than two (2) weeks prior to the confirmation hearing.

c. **Payment of Retained Counsel Fees for the Title Claim.** Pursuant to the terms of First American’s engagement with Retained Counsel, First American shall pay for Retained Counsel’s legal fees incurred in defense of the Title Claim, including the related negotiation, documentation and consummation of this Agreement.

4. **Conditions to Payment Date.** The “**Payment Date**” shall be the business day when all of the following conditions have been satisfied:

(i) approval by the Bankruptcy Court of the Amended Disclosure Statement;

(ii) entry by the Bankruptcy Court of the Confirmation Order approving the Amended Joint Plan;

(iii) execution of this Agreement by all Parties;

(iv) approval of this Agreement by the Bankruptcy Court pursuant to the 9019 Order; and

(v) receipt by First American from the Debtors (with a copy to all of the Parties to this Agreement) of written confirmation of the reasonably anticipated date upon which the Effective Date will occur, which shall not be issued longer than five (5) business days prior to such reasonably anticipated date.

5. **Bankruptcy Actions.** Upon execution of this Agreement, each of the Parties shall take the following actions, as applicable, in connection with the Chapter 11 Cases:

a. The Debtors, the Ad Hoc Secured Noteholders Committee and the Indenture Trustee shall use commercially reasonable efforts to secure the agreement with the UCC so that the Standing Motion shall remain in abeyance so long as this Agreement remains in effect; provided that upon the Effective Date of the Amended Plan, the Standing Motion shall be dismissed/withdrawn with prejudice;

b. Upon execution of this Agreement, the Debtors and the Ad Hoc Secured Noteholders Committee shall use reasonable efforts to cause a motion to be filed seeking entry of the 9019 Order and cause the Bankruptcy Court to enter the 9019 Order;

c. As soon as practical after the date on which this Agreement is executed by all Parties, the Debtors shall use reasonable efforts to cause the current filed versions of the disclosure statement and joint plan to be amended so as to conform such documents to the Amended Disclosure Statement and Amended Joint Plan as set forth herein; and

d. The Debtors and the Ad Hoc Secured Noteholders Committee shall use commercially reasonable efforts to oppose and defend against any (i) objections to confirmation of the Amended Joint Plan, (ii) motions, applications, or any similar such request seeking a stay of the Confirmation Order, and (iii) appeals of the Confirmation Order.

6. **Cancellation of Title Policies.** Upon the Escrow Disbursement, and without further action by any entity, person, or Party:

a. First American, the Indenture Trustee, the Insureds (pursuant to the 9019 Order and Confirmation Order), and the Ad Hoc Committee of Secured Noteholders agree that (i) the Lender Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the Indenture Trustee, Secured Noteholders, the Ad Hoc Committee of Secured Noteholders, Insureds, and/or their successors or assigns, as applicable, (ii) all representations and warranties and obligations of First American, if any, including any obligation of First American to provide coverage or a defense (including providing costs) under the Lender Title Policies are forever cancelled and terminated, rescinded, and void and unenforceable by the Indenture Trustee, the Secured Noteholders, the Ad Hoc Committee of Secured Noteholders, the Insureds, and/or their successors or assigns, as applicable, and (iii) any commitments, endorsements, or other documents issued by First American and/or its agents, and/or First American's subsidiaries and affiliates and/or their agents related in any way to providing title insurance to the Indenture Trustee, Secured Noteholders, the Ad Hoc Committee of Secured Noteholders, Insureds, and/or their successors and assigns that relates in any way to the property described in the Lender Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the Indenture Trustee, the Secured Noteholders, the Ad Hoc Committee of Secured Noteholders, the Insureds, and/or their successors or assigns, as applicable;

b. First American, the Indenture Trustee, the Insureds (pursuant to the 9019 Order and Confirmation Order), the Ad Hoc Committee of Secured Noteholders, and the Debtors agree that (i) the Owner Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the Debtors and/or their successors or assigns (including the Indenture Trustee, the Insureds, and the Ad Hoc Committee of Secured Noteholders), (ii) all representations and warranties and obligations of First American, if any, including any obligation of First American to provide coverage or a defense (including providing costs) under the Owner Title Policies are forever cancelled and terminated, rescinded, and void and unenforceable by the Debtors and/or their successors or assigns (including the Indenture Trustee, the Insureds, and the Ad Hoc Committee of Secured Noteholders), as applicable, and (iii) any commitments, endorsements, or other documents issued by First American and/or its agents, and/or First American's subsidiaries and affiliates and/or their agents related in any way to providing title insurance to the Debtors and/or their successors and assigns (including the Indenture Trustee, the Insureds, and the Ad Hoc Committee of Secured Noteholders) that relates in any way to the property described in the Owner Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the Debtors and/or their



successors or assigns (including the Indenture Trustee, the Insureds, and the Ad Hoc Committee of Secured Noteholders), as applicable; and

c. The Debtors will insert in the Confirmation Order a provision which will be effective upon the Escrow Disbursement that confirms that (i) the Owner Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by any of the Debtors and/or their successors or assigns (including the Indenture Trustee, the Insureds, the Ad Hoc Committee of Secured Noteholders, and the Secured Noteholders), (ii) all representations and warranties and obligations of First American, if any, including any obligation of First American to provide coverage or a defense (including providing costs) under the Owners Title Policies are forever cancelled and terminated, rescinded, and void and unenforceable by the Debtors and/or their successors or assigns (including the Indenture Trustee, the Insureds, the Ad Hoc Committee of Secured Noteholders, and the Secured Noteholders), and (iii) any commitments, endorsements, or other documents issued by First American and/or its agents, and/or First American's subsidiaries and affiliates and/or their agents related in any way to providing title insurance to the Debtors, and/or their successors and assigns (including the Indenture Trustee, the Insureds, the Ad Hoc Committee of Secured Noteholders, and the Secured Noteholders) that relate in any way to the property described in the Owner Title Policies shall be forever cancelled and terminated, rescinded, and void and no longer enforceable by the Debtors, the Indenture Trustee, the Insureds, the Ad Hoc Committee of Secured Noteholders, and the Secured Noteholders, as applicable.

7. **General Representations and Warranties.** As inducement to enter into this Agreement, each of the Parties solely for itself hereby represents and warrants as follows:

7.1. **Authorization and Validity.** The execution and delivery of this Agreement by the Parties and the performance of their obligations hereunder have been duly authorized, and this Agreement constitutes the legal, valid and binding obligation of the Parties in accordance with its terms, provided that, as to the Debtors, such authorization is subject to approval of the Bankruptcy Court as provided in Section 9 below. Pursuant to the terms and provisions of the Indenture, the execution and delivery of this Agreement shall constitute and shall be deemed to be a direction by each holder of the Ad Hoc Committee of Secured Noteholders to the Indenture Trustee to enter into, execute, and abide by the terms and conditions of the Agreement.

7.2. **Benefit.** The Parties have derived direct or indirect benefit from this Agreement and the transactions contemplated hereby.

7.3. **Arms-Length Agreement.** The Parties acknowledge that: (a) they have had access to independent legal counsel in the negotiation of the terms of and in the preparation and execution of this Agreement, and that they have had the opportunity to review, analyze and discuss with counsel this Agreement and the underlying factual matters relevant to this Agreement for a sufficient period of time before the execution and delivery hereof; (b) all of the terms of this Agreement were negotiated at arm's-length; (c) this Agreement was executed without fraud, duress, error, violence or intimidation, undue influence or coercion of any kind exerted by any of the Parties; and (d) the execution and delivery of this Agreement is the free and voluntary act of each Party.

7.4. Organization and Standing. Each of the Parties are duly organized, validly existing and in good standing under the laws of all applicable jurisdictions, to carry on the business conducted by it, and to enter into and perform this Agreement and to carry out the transactions contemplated hereby.

7.5. Free Act and Will. Neither of the Parties is entering into this Agreement or in reliance upon any statement, representation or warranty of any nature whatsoever made by the other Party or any other person or entity whatsoever, which is not expressly stated herein. Each of the Parties is, or has had an opportunity to be, represented by legal counsel of its choice who has read this Agreement and advised the Parties of its contents and meaning. Each of the Parties is signing this Agreement voluntarily, without coercion, intimidation or duress of any kind, and with full understanding of their contents and meaning following consultation with legal counsel of its own choosing.

7.6 The Parties represent and warrant that they have not assigned, pledged, hypothecated or otherwise divested or encumbered all or any part of their claims, rights, causes of action and all other entitlements against First American relating in any way to the Title Policies. The Parties further represent and warrant that they will not in the future assign, pledge, hypothecate or otherwise divest or encumber all or any part of their claims, rights, causes of action and all other entitlements against First American relating in any way to the Title Policies prior to the termination of the Title Policies contemplated by the terms of this Agreement.

8. Releases. Effective upon the Escrow Disbursement, and without further action by any Party, person, or entity:

a. First American, on behalf of itself, its affiliates, and its subsidiaries, shall release and discharge, and be deemed to have released and discharged, each of the Indenture Trustee, Secured Noteholders, Debtors, the Ad Hoc Committee of Secured Noteholders, and/or the Insureds, and each of their respective current and former employees, officers, directors, members, managers, representatives, agents, subsidiaries, parents, affiliates, predecessors, successors, assignees, attorneys, and other professionals, of and from any and all manner of action or actions, cause or causes of action, in law or equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims (including, but not limited to, claims for attorneys' fees, costs, and sanctions), counterclaims, damages, demands, losses, costs, or expenses of any nature, currently existing or arising in the future, whether known or unknown, suspected or unsuspected, fixed or contingent, concealed or hidden, latent or patent, that First American could have asserted against such parties (whether derivatively or directly), related in any way to the Chapter 11 Cases, the Title Policies, the Deed of Trust, Standing Motion, and/or the Title Claim; provided that the foregoing release shall not limit nor be deemed to limit First American's rights to enforce this Agreement in accordance with its terms.

b. Each of the Indenture Trustee, Secured Noteholders, the Debtors, the Ad Hoc Committee of Secured Noteholders, and the Insureds (pursuant to the 9019 Order and the Confirmation Order) shall release and discharge, and be deemed to have released and discharged, First American and its current and former employees, officers, directors, members, managers, representatives, agents, subsidiaries, parents, affiliates,

predecessors, successors, assignees, attorneys, and other professionals, of and from any and all manner of action or actions, cause or causes of action, in law or equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims (including, but not limited to, claims for attorneys' fees, costs, and sanctions), counterclaims, damages, demands, losses, costs, or expenses of any nature, currently existing or arising in the future, whether known or unknown, suspected or unsuspected, fixed or contingent, concealed or hidden, latent or patent, that the Indenture Trustee, the Insureds (pursuant to the 9019 Order and the Confirmation Order), Secured Noteholders, Debtors, and/or the Ad Hoc Committee of Secured Noteholders, could have asserted against First American (whether derivatively or directly), related in any way to the Chapter 11 Cases, the Title Policies, the Deed of Trust, Standing Motion, and/or the Title Claim; provided that the foregoing release shall not limit nor be deemed to limit the Indenture Trustee's, Secured Noteholders', the Ad Hoc Committee of Secured Noteholders, the Debtors', and/or the Insureds' rights to enforce this Agreement in accordance with its terms.

c. EACH OF THE DEBTORS, FIRST AMERICAN, THE INDENTURE TRUSTEE, SECURED NOTEHOLDERS, THE AD HOC COMMITTEE OF SECURED NOTEHOLDERS, AND THE INSUREDS (PURSUANT TO THE 9019 ORDER AND THE CONFIRMATION ORDER) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH OF THE DEBTORS, FIRST AMERICAN, THE INDENTURE TRUSTEE, THE AD HOC COMMITTEE OF SECURED NOTEHOLDERS, THE INSUREDS (PURSUANT TO THE 9019 ORDER AND THE CONFIRMATION ORDER), AND SECURED NOTEHOLDERS EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY, INCLUDING, WITHOUT LIMITATION, THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542. THE RELEASES CONTAINED IN THIS SECTION 8 ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

9. **Effectiveness.** This Agreement shall be effective and binding upon the Parties: upon the date that the last of the following occur:

- a. execution of this Agreement by all Parties;
- b. entry of the 9019 Order by the Bankruptcy Court;

- c. entry by the Bankruptcy Court of an order approving the Amended Disclosure Statement;
- d. entry by the Bankruptcy Court of the Confirmation Order approving the Amended Joint Plan; and
- e. the Effective Date.

In the event that each of the foregoing does not occur by October 31, 2016, such date which the Parties may extend by agreement, this Agreement shall be null, void, and have no force or effect, the Escrow Agent shall immediately return the First American Payment to First American, and all Parties' rights, claims, and arguments that existed prior to this Agreement are preserved.

10. **Good-Faith Cooperation; Further Assurances.** The Parties shall cooperate with each other in good faith in respect of matters concerning the implementation and consummation of this Agreement.

11. **No Third Party Beneficiaries.** This Agreement is not intended for the benefit of any person other than the Parties and the Insureds, and no such other person will be deemed to be a third party beneficiary hereof.

12. **Governing Law.** All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement will be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application hereto of the laws of any jurisdiction other than the State of New York.

13. **Waiver of Jury.** In any court proceeding arising out of or relating to this Agreement, each Party hereby waives any right to trial by jury.

14. **Jurisdiction.** Each of the Parties hereby submit to (i) the exclusive jurisdiction of the Bankruptcy Court for purposes of any enforcement of this Agreement and (ii) with respect to all other disputes arising out of or related to this Agreement, each of the Parties fully reserves any and all rights and defenses as to jurisdiction and venue.

15. **Notice.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation or receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or electronic mail ("**e-mail**") of a portable document format ("**PDF**") document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 15):

If to Indenture Trustee (as the Trustee and Collateral Agent):

U.S. Bank National Association  
Global Corporate Trust Services  
1420 Fifth Avenue, Suite 700  
Seattle, WA 98101  
E-mail: diana.jacobs@usbank.com  
Facsimile: (206) 344-4694  
Attention: Diana Jacobs

with copies to:

Dorsey & Whitney LLP  
51 W. 52<sup>nd</sup> Street  
New York, New York 10019-6119  
E-mail: schnabel.eric@dorsey.com  
Facsimile: (646) 514-9843  
Attention: Eric Lopez Schnabel, Esq.

If to Ad Hoc Committee of Secured Noteholders:

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036  
E-mail: mlahaie@akingump.com  
Facsimile: (212) 872-1002  
Attention: Meredith Lahaie, Esq.

If to First American:

First American Title Insurance Company  
114 East Fifth Street  
Santa Ana, California 92701  
E-mail: jweber@firstam.com  
Facsimile: (714) 800-3386  
Attention: Jeffrey A. Weber, Esq.

with copies to:

DLA Piper LLP (US)  
6225 Smith Avenue  
Baltimore, MD 21209  
E-mail: richard.kremen@dlapiper.com, dale.cathell@dlapiper.com  
Facsimile: (410) 580-3191  
Attention: Richard M. Kremen, Esq. and Dale K. Cathell, Esq.

If to the Debtors:

Horsehead Holding Corp.  
4955 Steubenville Pike, Suite 405

Pittsburgh, PA 15205  
E-Mail: gwhitaker@horsehead.net  
Facsimile: (412) 788-1812

with copies to:

Pachulski Stang Ziehl & Jones LLP  
919 North Market Street, 17th Floor  
Wilmington, DE 19801  
E-Mail: ljones@pszjlaw.com  
Facsimile: (302) 652-4400  
Attention: Laura Davis Jones, Esq.

and

Pachulski Stang Ziehl & Jones LLP  
150 California Street, 15th Floor  
San Francisco, CA 94111-4500  
Email: dbertenthal@pszjlaw.com  
Facsimile: (415) 263-7010  
Attention: David Bertenthal

16. **Consultation with Counsel.** The Parties agree and acknowledge that they have had the opportunity to freely consult with attorneys of their own choosing and are fully aware of their rights, responsibilities, and the consequences of the execution of this Agreement before executing same.

17. **No Strict Construction.** This Agreement shall be deemed to have been jointly drafted by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any party.

18. **Severability.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will otherwise remain in full force and effect.

19. **Entire Agreement; Amendment; Waiver.** This Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them. This Agreement may not be changed, modified, amended, or supplemented, except in a writing signed by each of the Parties. The terms and conditions hereof may not be waived except in a writing executed by each of the Parties.

20. **No Admission of Liability.** It is understood and agreed by the Parties that this Agreement represents a settlement and compromise of any and all claims in any way related to Chapter 11 Cases, the Title Policies, the Deed of Trust, and/or the Title Claim and neither this Agreement itself, any of the payments or covenants described herein, nor anything else connected with this Agreement is to be construed as an admission of fault or liability.

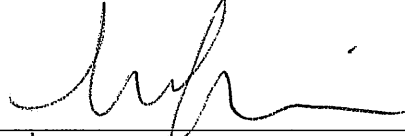
21. **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. Signed signature pages may be transmitted by facsimile or e-mail, and any such signature shall have the same legal effect as an original.

22. **Headings.** The headings in this Agreement are for purposes of convenience only, and will not be deemed to amend, modify, expand, limit, or in any way affect the meaning of any of the provisions hereof.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**THE AD HOC COMMITTEE OF SECURED  
NOTEHOLDERS**

By:   
Name: Meredith Lehaie  
Title: Partner

**U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee and Collateral Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEBTORS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_




IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**THE AD HOC COMMITTEE OF SECURED  
NOTEHOLDERS:**

By: \_\_\_\_\_  
Name:  
Title:

**U.S. BANK NATIONAL ASSOCIATION.,** as  
Indenture Trustee and Collateral Agent

By:   
Name: Diana Jacobs  
Title: Vice President

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**DEBTORS:**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**THE AD HOC COMMITTEE OF SECURED  
NOTEHOLDERS:**

By: \_\_\_\_\_  
Name:  
Title:

**U.S. BANK NATIONAL ASSOCIATION., as  
Indenture Trustee and Collateral Agent**

By: \_\_\_\_\_  
Name:  
Title:

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: Jeffrey A. Weber SVP  
Name: JEFFREY A. WEBER  
Title: SENIOR VICE PRESIDENT

**DEBTORS:**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**THE AD HOC COMMITTEE OF SECURED  
NOTEHOLDERS**

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By: \_\_\_\_\_  
Name:  
Title:

**U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee and Collateral Agent**

By: \_\_\_\_\_  
Name:  
Title:

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**DEBTORS**

By: Timothy D. Boates  
Name: Timothy D. Boates  
Title: Chief Restructuring Officer