

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

In re:

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Related Docket No(s): 69 and 72

**NOTICE OF FILING OF EXHIBIT TO MOTION OF DEBTORS FOR INTERIM AND
FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION
FINANCING PURSUANT TO 11 U.S.C. §§ 362 AND 364 AND (II) SCHEDULING
FINAL HEARING**

The undersigned proposed counsel for Essar Steel Minnesota LLC and ESML Holdings Inc. (the “Debtors”) hereby certifies and states as follows:

1. On July 19, 2016, the Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 362 and 364 and (II) Scheduling Final Hearing (the “Motion”) was filed with the Court at Docket Number 69.

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¹ The last four digits of Essar Steel Minnesota LLC’s federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.’s federal taxpayer identification number are 8071.

2. Attached hereto as Exhibit 1 is a copy of the DIP Guaranty² referenced in the Motion.

Dated: July 25, 2016

Respectfully submitted,

/s/ L. John Bird

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Proposed Attorneys for the Debtors and Debtors in Possession

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

Exhibit 1

GUARANTY

This **GUARANTY**, dated as of July [●], 2016, (this “*Agreement*” or “*Guaranty*”), is given by ESML HOLDINGS, INC., a Delaware corporation (“*Holdings*” or the “*Guarantor*”) in favor of STRATEGIC PARTNERS HOLDINGS LIMITED (together with its successors and assigns, the “*Payee*”);

WHEREAS, on July 8, 2016, Holdings and Essar Steel Minnesota LLC (“*Maker*”), a Minnesota limited liability company, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “*Chapter 11 Cases*”);

WHEREAS, in connection with the Chapter 11 Cases, Maker and Payee entered into that certain Debtor-in-Possession Promissory Note, dated as of the date hereof, in favor of Payee (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the “*Note*”); any capitalized term used and not defined in this Agreement shall have the meaning ascribed to such term in the Note;

WHEREAS, it is a condition precedent to the effectiveness of the Note, and the obligation of Payee to make any Advance thereunder, that Holdings shall have executed this Agreement;

WHEREAS, the net proceeds of the Advances will be used as set forth in the Note, and Holdings will derive substantial direct and indirect benefit from the borrowing by Maker of the Advances;

NOW, THEREFORE, in consideration of the premises and Payee agreeing to enter into the Note and to provide the Advances under the Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Holdings hereby agrees as follows:

ARTICLE I

Defined Terms

Section 1.1 Definitions. For purposes of this Agreement, the following terms shall have the respective meanings indicated below:

- (a) “*Guaranteed Obligations*” has the meaning set forth in Section 2.1(a).
- (b) “*Guaranty Date*” means each date any Obligations become due and payable whether at stated maturity, by acceleration or otherwise.
- (c) “*Material Adverse Effect*” means a (a) material adverse effect on (i) the ability of the Guarantor to perform its material obligations under this Agreement or (ii) the rights of or remedies available to Payee under this Agreement or (b) a Material Adverse Effect as such term is defined in the Note.
- (d) “*Obligations*” means all obligations, including, without limitation, the obligations to pay principal, interest and all other amounts, under the Note.

ARTICLE II

Guaranty

Section 2.1 Guaranty. (a) The Guarantor hereby, absolutely and unconditionally guarantees to Payee, irrespective of the validity and enforceability of the Note or the Obligations of the Maker thereunder, that, upon a Guaranty Date: (i) the principal of, premium and interest on, the Advances and

any other Obligations due under the Note will be promptly paid in full when due, and interest on the overdue principal of and interest on the Advances, if any, if lawful, and all other Obligations of the Maker to the Payee under the Note will be promptly paid in full or performed, all in accordance with the terms hereof, the Note; and (ii) in case of any extension of time of payment or renewal of the Advances or any of such other Obligations under the Note, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise (collectively, the “*Guaranteed Obligations*”). Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantor will be obligated to pay the same immediately. Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantor hereby agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Advances, this Agreement, or the Note, the absence of any action to enforce the same, any waiver or consent by Payee with respect to any provisions hereof or thereof, the recovery of any judgment against the Maker, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Maker, any right to require a proceeding first against the Maker, protest, notice and all demands whatsoever. Notwithstanding anything to the contrary herein, this Section 2.1(b) shall be subject to the terms and conditions of the DIP Order.

(c) The Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Payee in respect of any Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Payee, on the other hand, (i) the maturity of the Obligations guaranteed hereby may be accelerated as provided in Section 10 of the Note for the purposes of this Agreement, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Obligations as provided in Section 10 of the Note, such Obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purpose of this Agreement.

Section 2.2 Limitation on Guarantor Liability. The Guarantor hereby confirms that it is the intention of the parties that the Guaranty of the Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to this Guaranty. To effectuate the foregoing intention, Payee and the Guarantor hereby irrevocably agree that the obligations of the Guarantor will be limited to the maximum amount permitted by law, after giving effect to all other contingent and fixed liabilities of the Guarantor that are relevant under such laws.

Section 2.3 No Discharge or Diminishment of Guaranty. (a) The obligations of the Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including, without limitation:

- (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise;
- (ii) any change in the corporate existence, structure or ownership of the Maker or the Guarantor or of any other Person liable for any of the Guaranteed Obligations;
- (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Maker, the Guarantor, or any other guarantor of or other Person liable for any of the Guaranteed Obligations, or their assets or any resulting release or discharge of any obligation of

the Maker, the Guarantor, or any other guarantor of or other Person liable for any of the Guaranteed Obligations; or

(iv) the existence of any claim, setoff or other rights which the Guarantor may have at any time against the Maker, any other guarantor of the Guaranteed Obligations, the Payee or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of the Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by the Maker, the Guarantor or any other guarantor of or other person liable for any of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of the Guarantor hereunder are not discharged or impaired or otherwise affected by:

(i) the failure of Payee to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations;

(ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations;

(iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Maker for all or any part of the Guaranteed Obligations or any obligations of any other guarantor of or other Person liable for any of the Guaranteed Obligations;

(iv) any action or failure to act by Payee with respect to any collateral which may at any time exist to secure any part of the Guaranteed Obligations; or

(v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of the Guarantor or that would otherwise operate as a discharge of the Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

Section 2.4 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations are rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Maker or otherwise, the Guarantor's obligations under this Agreement with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not Payee is in possession of this Agreement. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Maker, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantors forthwith on demand by Payee.

Section 2.5 Releases; Interest. This Guaranty will be released and this Agreement shall be terminated with no further liability of the Guarantor upon the earlier of (i) full payment to Payee in cash of all the Obligations under the Note and (ii) the full payment by the Guarantor of the Guaranteed Obligations.

ARTICLE III

Representations, Warranties and Covenants

Section 3.1 Representations, Warranties and Covenants. The Guarantor hereby represents and warrants to Payee on the date hereof and on the Effective, that:

(a) The Guarantor (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) has the corporate power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (iii) is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification except to the extent the failure to be so qualified could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, (iv) is in compliance in all material respects with all laws, regulations and orders of any governmental authority applicable to it or its properties and all indentures, agreements and other instruments binding upon it or its properties and (v) shall not change its jurisdiction of organization and legal name without prior written consent of Payee;

(b) Subject to the entry of the DIP Order, the Guarantor has the corporate power and authority, and the legal right, to make, deliver and perform this Agreement and has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement; no consent or authorization of, filing with, notice to or other act by or in respect of, any governmental authority or any other person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement; this Agreement has been duly executed and delivered on behalf of the Guarantor; this Agreement constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing;

(c) Subject to the entry of the DIP Order, the execution, delivery and performance of this Agreement (i) will not violate any applicable law or regulation or any order of any governmental authority, or violate or result in a default under any indenture, agreement or other instrument binding upon the Guarantor or its assets, except to the extent that any such violations or defaults would not, individually, or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (ii) will not result in the creation or imposition of any lien on any asset of the Guarantor;

(d) Other than the Chapter 11 Cases, no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Guarantor, threatened by or against the Guarantor or against any of its or their respective properties or revenues with respect to this Agreement or any of the transactions contemplated hereby, which would, individually or in the aggregate, reasonably be expect to result in a Material Adverse Effect;

(e) Other than the Chapter 11 Cases, the Guarantor is not entitled in any jurisdiction in which judicial proceedings may at any time be commenced with respect to this Agreement, to claim for itself or its property, assets or revenues any immunity (whether by reason of sovereignty or otherwise) from suit, jurisdiction of any court, attachment prior to judgment, setoff, execution of a judgment or from any other legal process or remedy, and to the extent that there may be attributed to the Maker such an immunity (whether or not claimed), and to the extent that the Guarantor may hereafter be entitled to claim such an immunity, the Guarantor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity; and

(f) As of the date hereof, the Guarantor has not incurred, assumed, guaranteed, endorsed or otherwise become responsible for any indebtedness for borrowed money in excess of \$5 million other than (i) any such indebtedness identified in the audited annual financial statements for the fiscal year ended December 31, 2015 and (ii) the unaudited quarterly financial statements for the fiscal quarter ended March 31, 2016, copies of which shall be provided to the Payee.

(g) The Guarantor shall provide to Payee any financial and operational information Payee may reasonably request.

ARTICLE IV

Miscellaneous

Section 4.1 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Guarantor and shall insure to the benefit of the Payee and its successors and assigns; provided that the Guarantor may not assign, transfer or delegate this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Payee.

Section 4.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof. In the event of any inconsistency between the DIP Order and this Agreement, the provisions in the DIP Order shall be controlling.

Section 4.3 Integration. This Agreement reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, on or before the date hereof.

Section 4.4 Amendments in Writing, No Waiver by Course of Conduct. No amendment or waiver of any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by each party hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure to exercise, nor any delay in exercising, on the part of Payee, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Payee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Payee would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

Section 4.5 Confidentiality. Payee hereby agrees to hold this Agreement in confidence pursuant to the terms of Section 12(c) of the Note.

Section 4.6 Enforcement Expenses; Indemnification. (a) The Guarantor agrees to pay, or reimburse Payee for its fees, reasonable and documented out-of-pocket costs and expenses incurred in collecting against the Guarantor under the Guaranteed Obligations created under this Agreement or otherwise enforcing or preserving any rights or obligations under this Agreement, including, without limitation, the reasonable fees and disbursements of its agents and counsel to Payee.

(b) The agreements in this Section 4.6 shall survive repayment of the Obligations and all other amounts payable under the Note.

Section 4.7 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic transmission shall be equally as effective as delivery of a manually executed counterpart.

Section 4.8 CHOICE OF LAW. **EXCEPT TO THE EXTENT GOVERNED BY THE BANKRUPTCY CODE, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

Section 4.9 Submission to Jurisdiction. The Guarantor hereto irrevocably hereby expressly waives all right to object to jurisdiction or execution in any legal action or proceeding relating to this Agreement which it may now or hereafter have by reason of its present domicile or by reason of any subsequent or other domicile the Guarantor might have. Except insofar as the Bankruptcy Court has jurisdiction over the matter, the Guarantor hereby irrevocably consents and agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be commenced in the Federal or State Courts located in the Borough of Manhattan, City and State of New York, and by execution and delivery of this Agreement, each party hereto submits to and accepts and consents, generally and unconditionally, to personal jurisdiction in any such court with regard to any such action or proceeding for itself and in respect of its properties and assets. The Guarantor agrees that a judgment in any such action, suit or proceeding may be enforced in any other jurisdiction by suit upon such judgment, a certified copy of which shall be conclusive evidence of judgment. Subject to the jurisdiction of the Bankruptcy Court, the Guarantor hereby waives any objection it may now or hereafter have to the laying of the venue of any such action, suit or proceeding, and further waives any claim that any such action, suit or proceeding brought in any of the aforesaid courts has been brought in any inconvenient forum.

Section 4.10 Jury Trial Waiver. **EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. EACH PARTY HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

Section 4.11 Notices. All notices, requests, consents, demands and other communications required or permitted to be given under this Agreement to any Person shall be in writing, and shall be effective when received, and shall be directed to the address of the Guarantor set forth below its signature below, and as to Payee, to such Person in the manner and address as required under the Note.

Section 4.12 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such

prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

ESML HOLDINGS, INC., as Guarantor

By: _____
Name:
Title:

Notice Address:

c/o Essar Steel Minnesota LLC
555 W 27th Street
Hibbing, MN 55746
Attention: Chief Financial Officer

With a copy to:

c/o Essar Steel Minnesota LLC
277 Park Avenue, 35th Floor
New York, New York 10017
Attention: General Counsel
Email: esml.legal@essar.com

Signature Page to ESML Holdings, Inc. Guaranty

PAYEE:

**STRATEGIC PARTNERS HOLDINGS
LIMITED**

By: _____
Name:
Title:

Signature Page to ESML Holdings, Inc. Guaranty