US CONCRETE INC
Form S-1
September 01, 2011

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As filed with the Securities and Exchange Commission on September 1, 2011
Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

U.S. CONCRETE, INC.
(Exact name of registrant as specified in its charter)

Delaware	**3272**	**76-0586680**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

2925 Briarpark, Suite 1050
Houston, Texas 77042
(713) 499-6200
(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)

GUARANTORS LISTED ON THE TABLE OF ADDITIONAL REGISTRANTS

Curt M. Lindeman, Esq.
U.S. Concrete, Inc.
2925 Briarpark, Suite 1050
Houston, Texas 77042
(713) 499-6200
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Tracey A. Zaccone, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: þ

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer o	Accelerated filer o	Non-accelerated filer o	Smaller reporting company þ

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Unit(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
9.5% Convertible Secured Notes due 2015	$8,453,000	100%	$8,453,000	$982
Guarantees of 9.5% Convertible Secured Notes due 2015(2)				

(1) Estimated solely for the purpose of computing the registration fee in accordance with Rule 457(a) under the Securities Act of 1933, as amended (the Securities Act).

(2) Pursuant to Rule 457(n) under the Securities Act, no separate fee for the guarantees is payable.

The registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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TABLE OF ADDITIONAL REGISTRANTS

Name	State or Other Jurisdiction of Incorporation or Organization	Primary Standard Industrial Classification Code Number	I.R.S. Employer Identification Number
Alberta Investments, Inc.	Texas	3272	75-1941497
Alliance Haulers, Inc.	Texas	3272	75-2683236
American Concrete Products, Inc.	California	3272	94-2623187
Atlas Redi-Mix, LLC	Texas	3272	27-0243123
Atlas-Tuck Concrete, Inc.	Oklahoma	3272	73-0741542
Beall Concrete Enterprises, LLC	Texas	3272	76-0643536
Beall Industries, Inc.	Texas	3272	75-2052872
Beall Investment Corporation, Inc.	Delaware	3272	51-0399865
Beall Management, Inc.	Texas	3272	75-2879839
Breckenridge Ready Mix, Inc.	Texas	3272	75-1172482
Central Concrete Supply Co., Inc.	California	3272	94-1181859
Central Precast Concrete, Inc.	California	3272	94-1459358
Concrete Acquisition IV, LLC	Delaware	3272	27-1015720
Concrete Acquisition V, LLC	Delaware	3272	27-1015777
Concrete Acquisition VI, LLC	Delaware	3272	27-1015840
Concrete XXXIV Acquisition, Inc.	Delaware	3272	20-4166167
Concrete XXXV Acquisition, Inc.	Delaware	3272	20-4166206
Concrete XXXVI Acquisition, Inc.	Delaware	3272	20-4166240
Eastern Concrete Materials, Inc.	New Jersey	3272	22-1521165
Hamburg Quarry Limited Liability Company	New Jersey	3272	27-0373592
Ingram Concrete, LLC	Texas	3272	83-0486753
Kurtz Gravel Company	Michigan	3272	38-1565952
Local Concrete Supply & Equipment, LLC	Delaware	3272	26-3456597
Master Mix, LLC	Delaware	3272	26-1668532
Master Mix Concrete, LLC	New Jersey	3272	26-3800135
MG, LLC	Maryland	3272	26-2169279
NYC Concrete Materials, LLC	Delaware	3272	76-0630666
Pebble Lane Associates, LLC	Delaware	3272	26-3456520
Redi-Mix Concrete, L.P.	Texas	3272	20-0474765
Redi-Mix GP, LLC	Texas	3272	none
Redi-Mix, LLC	Texas	3272	83-0486751
Riverside Materials, LLC	Delaware	3272	26-2863588
San Diego Precast Concrete, Inc.	Delaware	3272	76-0616282
Sierra Precast, Inc.	California	3272	94-2274227
Smith Pre-Cast, Inc.	Delaware	3272	76-0630673

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Name	State or Other Jurisdiction of Incorporation or Organization	Primary Standard Industrial Classification Code Number	I.R.S. Employer Identification Number
Superior Concrete Materials, Inc.	District of Columbia	3272	52-1046503
Titan Concrete Industries, Inc.	Delaware	3272	76-0616374
USC Atlantic, Inc.	Delaware	3272	20-4166002
USC Management Co., LLC	Delaware	3272	27-1015638
USC Payroll, Inc.	Delaware	3272	76-0630665
USC Technologies, Inc.	Delaware	3272	20-4166055
U.S. Concrete On-Site, Inc.	Delaware	3272	76-0630662
U.S. Concrete Texas Holdings, Inc.	Delaware	3272	20-4166120

The address of each of the additional registrants is c/o U.S. Concrete, Inc., 2925 Briarpark, Suite 1050, Houston, Texas 77042.

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The information in this prospectus is not complete and may be changed. We and the selling noteholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED SEPTEMBER 1, 2011
Prospectus

$8,453,000
9.5% Convertible Secured Notes due 2015
U.S. Concrete, Inc.

The selling noteholders identified in this prospectus may sell, from time to time, up to $8,453,000 aggregate principal amount of 9.5% Convertible Secured Notes due 2015 (the Notes) issued by U.S. Concrete, Inc. (U.S. Concrete) on August 31, 2010. The selling noteholders may offer for sale the Notes covered by this prospectus in one or more transactions, directly to purchasers or through underwriters, brokers or dealers or agents, in public or private transactions, at fixed prices, prevailing market prices at the times of sale, prices related to the prevailing market prices, varying prices determined at the times of sale or negotiated prices. For additional information on the methods of sale, you should refer to the section of this prospectus entitled Plan of Distribution. We will not receive any of the proceeds from the sale of these Notes by the selling noteholders. We will bear all expenses in connection with this offering of our Notes, other than any underwriting fees, discounts, selling commissions and transfer taxes, if any.

The Notes are convertible prior to maturity into shares of our common stock at an initial rate of 95.23809524 shares of common stock per $1,000 principal amount of Notes, subject to adjustment if certain events occur, plus, if applicable, a make whole payment as described under Description of the Notes Conversion. The Notes accrue interest at a rate of 9.5% per year, payable quarterly on March 1, June 1, September 1 and December 1 of each year.

The Notes will mature on August 31, 2015 unless earlier converted or repurchased. We may redeem the Notes, in whole or in part, following a Conversion Termination Date, as defined herein, as described under Description of the Notes Redemption Optional Redemption. In the event of a Fundamental Change of Control, as defined herein, the holders of the Notes may require us to repurchase any Notes held by them as described under Description of the Notes Purchase at the Option of Holders Upon a Fundamental Change of Control.

The Notes are our senior secured obligations and rank equally in right of payment with all of our existing and future senior indebtedness. Our obligations under the Notes are guaranteed on a senior secured basis by substantially all of our subsidiaries located in the United States (the guarantors) as described herein. The Notes and the related guarantees are secured by first-priority liens on certain of the property and assets directly owned by us and each of the guarantors, including material owned real property, fixtures, intellectual property, capital stock of subsidiaries and certain equipment, subject to permitted liens and certain exceptions, and by a second-priority lien on our and the guarantors assets securing our $75.0 million asset-based revolving credit facility (the Revolving Facility) on a first-priority basis, including, inventory (including as extracted collateral), accounts, certain specified mixture trucks, chattel paper, general intangibles (other than collateral securing the Notes on a first-priority basis), instruments, documents, cash, deposit accounts, securities accounts, commodities accounts, letter of credit rights and all supporting obligations and related books and records and all proceeds and products of the foregoing, subject to permitted liens and certain exceptions.

We have not applied, and do not intend to apply, for listing of the Notes on any national securities exchange or automated quotation system.

You should carefully read this prospectus before you invest. **Investing in our Notes involves a high degree of risk. See Risk Factors beginning on page 9**.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2011.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC. You should rely only on the information contained in or incorporated by reference in this prospectus. Neither we nor the selling noteholders have authorized any person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information appearing in this prospectus or any documents incorporated by reference is accurate only as of the date of the applicable document or such other date stated in such documents. We will update this prospectus to the extent required by law. Neither we nor the selling noteholders are making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

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Prospectus Summary

This summary highlights material information about us and this offering, but does not contain all of the information that you should consider before investing in our Notes. The following summary is qualified in its entirety by the more detailed information and our consolidated financial statements and the accompanying notes included elsewhere or incorporated by reference into this prospectus. You should read this entire prospectus and the information incorporated by reference herein carefully, including the Risk Factors included and incorporated by reference in this prospectus and our consolidated financial statements and the accompanying notes incorporated by reference into this prospectus, before investing. This prospectus and the documents incorporated by reference include forward-looking statements that involve risks and uncertainties. See Cautionary Note Regarding Forward-Looking Statements.

Unless otherwise specified or the context requires otherwise, the terms U.S. Concrete, the Company, we, us, our, or USCR, refer to U.S. Concrete, Inc. and its subsidiaries. Selling noteholders refers to the selling noteholders named in the section of this prospectus entitled Selling Noteholders and certain of their transferees after the date of this prospectus.

Our Company

We are a major producer of ready-mixed concrete, precast concrete products and concrete-related products in select markets in the United States. We operate our business through our ready-mixed concrete and concrete-related products segment and our precast concrete products segment. We are a leading producer of ready-mixed concrete or precast concrete products in substantially all the markets in which we have operations. Ready-mixed and precast concrete products are important building materials that are used in a vast majority of commercial, residential and public works construction projects.

All of our operations are in (and all of our sales are made within) the United States. We operate principally in Texas, California and New Jersey/New York, with those markets representing approximately 36%, 25%, and 19%, respectively, of our consolidated revenues from continuing operations for the year ended December 31, 2010. According to publicly available industry information, those states represented an aggregate of 28% of the consumption of ready-mixed concrete in the United States in 2010 (Texas, 13.1%; California, 9.3%; and New Jersey/New York, 5.4%). Our consolidated revenues from continuing operations for the year ended December 31, 2010 were $455.7 million, of which we derived approximately 87.7% from our ready-mixed concrete and concrete-related products segment and 12.3% from our precast concrete products segment.

As of August 31, 2011, we had 102 fixed and 11 portable ready-mixed concrete plants, seven precast concrete plants and seven aggregates facilities. During 2010, these plants and facilities produced approximately 3.8 million cubic yards of ready-mixed concrete and 3.1 million tons of aggregates. We lease two of the seven aggregates facilities to third parties and retain a royalty on production from those facilities.

Our ready-mixed concrete and concrete-related products segment engages principally in the formulation, preparation and delivery of ready-mixed concrete to the job sites of our customers. We also provide services intended to reduce our customers overall construction costs by lowering the installed, or in-place, cost of concrete. These services include the formulation of mixtures for specific design uses, on-site and lab-based product quality control, and customized delivery programs to meet our customers needs.

Our marketing efforts primarily target concrete sub-contractors, general contractors, governmental agencies, property owners and developers and home builders whose focus extends beyond the price of ready-mixed concrete to product quality, on-time delivery and reduction of in-place costs. We generally do not provide paving or other finishing services, which construction contractors or subcontractors typically perform. To a lesser extent, this segment is also engaged in the mining and sale of aggregates and the resale of building materials, primarily to our ready-mixed concrete customers. These businesses are generally complementary to our ready-mixed concrete operations and provide us opportunities to cross-sell various products in markets where we sell both ready-mixed concrete and concrete-related products. We provide our ready-mixed concrete and concrete-related products from our continuing operations in north and west Texas, northern California, New Jersey, New York, Washington, D.C. and Oklahoma.

Our precast concrete products segment produces precast concrete products at seven plants in three states, with five plants in California, one in Arizona and one in Pennsylvania. Our customers choose precast technology for a

variety of architectural applications, including free-standing walls used for landscaping, soundproofing and security walls, panels used to clad a building façade and storm water drainage. Our operations also specialize in a variety of finished products, among which are utility vaults, manholes, catch basins, highway barriers, curb inlets, pre-stressed bridge girders, concrete piles and custom-designed architectural products.

For a description of our business, financial condition, results of operations and other important information regarding the Company and our consolidated financial statements and the accompanying notes, we refer you to our filings with the Securities and

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Exchange Commission, or SEC, incorporated by reference in this prospectus. For instructions on how to find copies of these documents, see Where You Can Find More Information and Incorporation by Reference.

Corporate Information

We were incorporated under the laws of the State of Delaware in 1997. Our principal offices are located at 2925 Briarpark, Suite 1050, Houston, Texas 77042, and our telephone number is (713) 499-6200. Our website is www.us-concrete.com. Information contained on our website does not constitute a part of this prospectus.

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OFFERING SUMMARY

The following summary highlights certain material information contained elsewhere in this prospectus but does not contain all the information that you should consider before investing in the Notes. We urge you to read this entire prospectus, including the Risk Factors section and our consolidated financial statements and accompanying notes included elsewhere or incorporated by reference into this prospectus.

Issuer	U.S. Concrete, Inc.
Securities Offered	Up to $8,453,000 aggregate principal amount of the 9.5% Convertible Notes due 2015 (the Notes).
Maturity Date	August 31, 2015 (the Maturity Date).
Interest Rates and Payment Dates	The Notes bear interest at 9.5% per year (calculated using a 360-day year consisting of twelve 30-day months), payable quarterly in cash in arrears on March 1, June 1, September 1 and December 1.
Use of Proceeds	The selling noteholders will receive all of the proceeds from the sale of the Notes offered by this prospectus. We will not receive any proceeds from the sale of our Notes by the selling noteholders.
Conversion Rights	The Notes are convertible, at the option of the holder, at any time on or prior to maturity, into shares of our common stock, par value $0.001 per share (the Common Stock), at an initial conversion rate of 95.23809524 shares of Common Stock per $1,000 principal amount of the Notes (as may be adjusted from time to time, the conversion rate). Holders of the Notes have the right to convert all or any portion of their Notes into the number of shares of Common Stock equal to the principal amount of the Notes to be converted divided by the conversion rate then in effect. The conversion rate is subject to adjustment to prevent dilution resulting from stock splits, stock dividends, combinations or similar events. There is no limitation as to the principal amount of the Notes you can convert at any time. In connection with any conversion, holders of the Notes to be converted will also have the right to receive accrued and unpaid interest on such Notes to the date of conversion (the Accrued Interest). We may elect to pay the Accrued Interest in cash or in shares of Common Stock. If we elect to satisfy our obligation to pay the Accrued Interest in shares, the number of shares issuable shall be determined by dividing the Accrued Interest by 95% of the trailing 10-day volume-weighted average price of the Common Stock. See Description of Capital Stock for information regarding certain terms of the Common Stock.
Additional Conversion Rights	If the closing price of the Common Stock exceeds 150% of the Conversion Price (as defined below) then in effect for at least 20 trading days during any consecutive 30-day trading period (the Conversion Event), we may provide, at our option, written notice (the Conversion Event Notice) of the occurrence of

the Conversion Event to each holder of the Notes in accordance with the indenture governing the Notes (the Indenture) and file a press release or Form 8-K with the SEC regarding the occurrence of the Conversion Event. Conversion Price means, per share of Common Stock, $1,000 divided by the applicable conversion rate, subject to adjustment. As of the date of this prospectus, the Conversion Price is approximately $10.50. Except as set forth in an Election Notice (as defined below), the right to convert the Notes with respect to the occurrence of the Conversion Event will terminate on the date that is 46 days following the date of the Conversion Event Notice (the Conversion Termination Date), such that you will have a 45-day period in which to convert your Notes up to the amount of the Conversion Cap (as defined

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below). Any Notes not converted prior to the Conversion Termination Date as a result of the Conversion Cap will be, at your election and upon written notice to us (the Election Notice), converted into shares of Common Stock on a date or dates prior to the date that is 180 days following the Conversion Termination Date (such date or dates to be specified in your Election Notice). A holder must deliver an Election Notice specifying its election with respect to the Conversion Event on or prior to the Conversion Termination Date. As used herein, Conversion Cap means the number of shares of Common Stock into which the Notes are convertible and that would cause the related holder to beneficially own (as such term is used in the Exchange Act) more than 9.9% of the Common Stock at any time outstanding.

Any Notes not otherwise converted prior to the Conversion Termination Date or specified for conversion in an Election Notice will be redeemable, in whole or in part, at our election at any time prior to maturity at par plus accrued and unpaid interest thereon to the Conversion Termination Date.

Interest on all of the Notes will cease to accrue on the Conversion Termination Date and substantially all of the covenants and related events of default contained in the Indenture will cease to be of any force and effect on the Conversion Termination Date (other than our obligation to convert, redeem or pay at maturity the Notes). The collateral securing the Notes and the related guarantees will be released on the Conversion Termination Date.

If the Conversion Event occurs on or prior to August 31, 2012, in addition to the shares issuable upon conversion or amounts received upon redemption, as applicable, the holders of the Notes will have a right to receive upon conversion, redemption or maturity, as applicable, the lesser of: (i) the aggregate amount of interest that would be payable from the Conversion Termination Date through August 31, 2012 (including any accrued and unpaid interest on such Notes to the Conversion Termination Date (or conversion date, if earlier)) and (ii) an aggregate amount equal to 15 months of interest (including any accrued and unpaid interest on such Notes to the Conversion Termination Date (or conversion date, if earlier)) (the amounts in clauses (i) and (ii), the Cash Conversion Amount). We may elect to pay the Cash Conversion Amount in cash or in shares of Common Stock. If we elect to satisfy our obligation to pay the Cash Conversion Amount in shares, the number of shares issuable will be determined by dividing the Cash Conversion Amount by 95% of the trailing 10-day volume-weighted average price of the Common Stock from the Conversion Termination Date.

We will pay the Cash Conversion Amount as follows: (i) on the Conversion Termination Date for all Notes converted prior to such date, (ii) on the date or dates specified in the Election Notice, if any, and (iii) on the date of the redemption or at maturity, as applicable, for all the other Notes.

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Fundamental Change of Control Make Whole; Repurchase Right

Upon the occurrence of a Fundamental Change of Control (as defined below), in addition to any conversion rights the holders of the Notes may have, each holder of Notes will have (i) a make-whole provision calculated as provided in the Indenture pursuant to which each holder may be entitled to additional shares of Common Stock upon conversion (the Make Whole Premium), and (ii) an amount equal to the interest on such Notes that would have been payable from the date of the occurrence of such Fundamental Change of Control (the Fundamental Change of Control Date) through August 31, 2013, plus any accrued and unpaid interest from August 31, 2010 to the Fundamental Change of Control Date (the amount in this clause (ii), the Make Whole Payment and collectively with the Make Whole Premium, the Fundamental Change of Control Make Whole). We may elect to pay the Make Whole Payment in cash or in shares of Common Stock. If we elect to satisfy our obligation to make the Make Whole Payment in Common Stock, the number of shares issuable will be determined by (A) if the Fundamental Change of Control is a merger or consolidation described in clause (i) of the related definition (as set forth below) and all of the Common Stock as of such Fundamental Change of Control Date is exchanged for stock of the acquiror, dividing the Make Whole Payment by the implied price per share for the Common Stock in connection with such Fundamental Change of Control, with such shares being treated the same as all other shares of Common Stock in such Fundamental Change of Control and (B) in all other cases, dividing the Make Whole Payment by 95% of the trailing 10-day volume-weighted average price of the Common Stock immediately prior to such Fundamental Change of Control.

In lieu of the foregoing, upon the occurrence of a Fundamental Change of Control, the holders of Notes will have the right to require us to repurchase their Notes in cash at par plus accrued and unpaid interest thereon.

A Fundamental Change of Control will be deemed to occur at such time as: (i) U.S. Concrete consolidates with or merges with or into another person (other than any subsidiary of U.S. Concrete or a merger for the purpose of changing U.S. Concrete s jurisdiction of incorporation) and its outstanding voting securities are reclassified into, converted for or converted into the right to receive any other property or security, or U.S. Concrete sells, conveys, transfers or leases all or substantially all of its properties and assets to any person (other than its subsidiary); provided that the foregoing will not constitute a fundamental change of control: (A) if persons that beneficially own U.S. Concrete s voting securities immediately prior to the transaction own, directly or indirectly, a majority of the voting securities of the surviving or transferee person immediately after the transaction in substantially the same proportion as their ownership of U.S. Concrete s voting securities immediately prior to the transaction or (B) if (1) at least 90% of the consideration paid for the Common Stock (and cash payments pursuant to dissenter s appraisal rights) in the merger or consolidation consists of common stock of a U.S. or non-U.S. company traded on a national securities exchange (or which will be traded or quoted when issued or exchanged in connection with such transaction) and (2) the market capitalization of the acquiror is at least equal to or greater than the market

capitalization of U.S. Concrete on the trading day immediately preceding the day on which such merger or consolidation is publicly announced; (ii) any person or group (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act, whether or not applicable), other than U.S. Concrete or any of its subsidiaries or any employee benefit plan of it or such subsidiary, is or becomes the beneficial owner, directly or indirectly, of more than 50% of the total voting power in the aggregate of all classes of U.S. Concrete s capital stock then outstanding and entitled to vote generally in elections of directors; or (iii) during any period of 12 consecutive months after August 31, 2010, persons who at the beginning of such 12 month period constituted U.S. Concrete s Board of Directors (the Board), together with any new persons whose election was approved by a vote of a majority of the persons then still comprising the Board who were either members of the Board at the beginning of such period or whose election, designation or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board.

A Purchaser Party (as defined below) will not be entitled to receive a Fundamental Change of Control Make Whole upon the occurrence of a Fundamental Change of Control if (i) such

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	Fundamental Change of Control is a merger, consolidation or sale with or into such Purchaser Party or any member of any group of which such Purchaser Party is a member or any of their respective affiliates; (ii) such Fundamental Change of Control is a transaction specified in clause (ii) of the Fundamental Change of Control definition and such Purchaser Party or any of its affiliates is a person or member of a group for purposes of such clause (ii); or (iii) the nominees of any such Purchaser Party or any member of any group which such Purchaser Party is a member or any of their respective affiliates constitute one or more of the new board members effecting such Fundamental Change of Control. A Purchaser Party means any beneficial owner who acquired the Notes from U.S. Concrete on August 31, 2010.
Redemption	Other than as provided under Additional Conversion Rights with respect to the Conversion Event, we do not have the right to redeem the Notes.
Guarantees	The Notes are unconditionally guaranteed by each of our existing and future direct or indirect domestic restricted subsidiaries (other than certain immaterial restricted subsidiaries) and any other of our subsidiaries that guarantee the Revolving Facility (collectively, the guarantors). As of the date of this prospectus, all of our subsidiaries are guarantors.
Ranking	The Notes and the guarantees thereof: are the Issuer s and the guarantors senior secured obligations; rank senior in right of payment to any of the Issuer s and the guarantors existing and future subordinated indebtedness, rank equally in right of payment with all of the Issuer s and the guarantors existing and future senior indebtedness; are effectively subordinated to all of our obligations under the Revolving Facility, to the extent of the value of collateral securing those obligations on a first-priority basis; rank effectively senior in right of payment to any of the Issuer s and the guarantors unsecured indebtedness to the extent of the value of the collateral for the Notes; and are structurally subordinated in right of payment to all existing and future indebtedness and other liabilities of the Issuer s non-guarantor subsidiaries.
Collateral	The Notes and related guarantees are secured by first-priority liens on certain of the property and assets directly owned by us and each of the guarantors, including material owned real property, fixtures, intellectual property, capital stock of subsidiaries and certain equipment, subject to permitted liens (including a second-priority lien in favor of the administrative agent under the Revolving Facility (the Revolving Facility Agent)) and certain exceptions (as described in

the security documents governing the Notes (collectively, the Security Documents)). Obligations under the Revolving Facility and those in respect of hedging and cash management obligations owed to the lenders (and their affiliates) party to the Revolving Facility (collectively, the Revolving Facility Obligations) are secured by a second-priority lien on such collateral.

The Notes and related guarantees are also secured by a second-priority lien on our and the guarantors assets securing the Revolving Facility Obligations on a first-priority basis, including, inventory (including as extracted collateral), accounts, certain specified mixture trucks, chattel paper, general intangibles (other than collateral securing the Notes on a first-priority basis), instruments, documents, cash, deposit accounts, securities accounts, commodities accounts, letter of credit rights and all supporting obligations and related books and records and all proceeds and products of the foregoing, subject to permitted liens and certain exceptions, as described in the Security Documents.

A material portion of the collateral which secures the Notes secures the Revolving Facility Obligations on a first-priority basis and secures the Notes on a second-priority basis. The

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remaining collateral which secures the Notes (on a first-priority basis) also secures obligations under the Revolving Facility Obligations on a second-priority basis. See Risk Factors Risks Related to the Notes and the Common Stock There may not be sufficient collateral to pay all or any of the Notes.

The Indenture and the Security Documents provide that any capital stock and other securities of any of our subsidiaries will be excluded from the collateral to the extent the inclusion of such capital stock in the collateral would cause such subsidiary to file separate financial statements with the SEC pursuant to Rule 3-16 of Regulation S-X. See Risk Factors Risks Related to the Notes and the Common Stock The Notes are not secured by a portion of the capital stock of any foreign subsidiaries. In addition, the pledge of the securities of our subsidiaries that secures the Notes will exclude capital stock or any other securities of any of our subsidiaries in excess of the maximum amount of such capital stock or securities that could be included in the collateral without creating a requirement to file separate financial statements with the SEC for that subsidiary and Description of the Notes.

Intercreditor Agreement

U.S. Concrete and the guarantors entered into an intercreditor agreement with the collateral agent under the Security Documents (the Collateral Agent) and the Revolving Facility Agent (the Intercreditor Agreement).

The Intercreditor Agreement sets forth the terms on which the Revolving Facility Agent and the Collateral Agent are permitted to receive, hold, administer, maintain, enforce and distribute the proceeds of their respective liens upon the collateral. The Intercreditor Agreement grants (i) to the Revolving Facility Agent, the exclusive right to enforce rights, exercise remedies (including setoff) and make determinations regarding the release, disposition, or restrictions of the collateral which secures the Revolving Facility Obligations on a first-priority basis and (ii) to the Collateral Agent under the Security Documents, the exclusive right to enforce rights, exercise remedies (including setoff) and make determinations regarding the release, disposition, or restrictions of the collateral which secures the Notes on a first-priority basis, in each case subject to limitations described therein, which limitations include an access right of the Revolving Facility Agent to exercise remedies in respect of its assets located on real property on which the Collateral Agent has a first-priority lien under the Security Documents.

See Description of the Notes Intercreditor Agreement for information regarding certain terms of the Intercreditor Agreement.

Certain Covenants

The Indenture, among other things, limits the Issuer s ability and the ability of the Issuer s restricted subsidiaries to:

- incur additional indebtedness or issue disqualified stock or preferred stock;

pay dividends or make other distributions or repurchase or redeem the Issuer s stock or subordinated indebtedness or make investments;

sell assets and issue capital stock of the Issuer s restricted subsidiaries;

incur liens;

enter into agreements restricting the Issuer s restricted subsidiaries ability to pay dividends;

enter into transactions with affiliates;

consolidate, merge or sell all or substantially all of our assets; and

designate the Issuer s subsidiaries as unrestricted subsidiaries.

These covenants are subject to important exceptions and qualifications, which are described under

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	Description of the Notes and in the Indenture.
Absence of Public Market	We have not applied, and do not intend to apply, for listing of the Notes on a national securities exchange or automated quotation system.
Book-Entry Form	The Notes were issued in book-entry form, which means that they are represented by one more permanent global securities registered in the name of The Depositary Trust Company or its nominee. The global securities are deposited with the Trustee as custodian for the depositary. See Description of the Notes Book-Entry; Delivery and Form.
Trustee/Collateral Agent	U.S. Bank National Association.
Risk Factors	An investment in the Notes involves substantial risks. See Risk Factors immediately following this summary for a discussion of certain risks relating to an investment in the Notes.

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Risk Factors

Investing in the Notes involves substantial risks. In addition to the other information in this prospectus, you should carefully read and consider the risk factors set forth below and the risks and uncertainties discussed under Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2010 and in our subsequent filings with the SEC that are incorporated herein by reference before deciding to invest in the Notes. Any such risks could adversely affect our business, results of operations, financial condition and liquidity. The price of the Notes could decline or our ability to make payments with respect to the Notes could be affected if one or more of these risks and uncertainties develop into actual events, causing you to lose all or part of your investment in the Notes. In assessing these risks, investors should also refer to the other information contained or incorporated by reference in our filings with the Securities and Exchange Commission. Certain statements in the Risk Factors section below and in the documents incorporated herein by reference are forward-looking statements. See Cautionary Note Regarding Forward-Looking Statements.

Risks Related to the Notes and the Common Stock

There may not be sufficient collateral to pay all or any of the Notes.

The Revolving Facility Obligations are secured by first-priority liens on certain of our assets, including, inventory (including, as extracted collateral), accounts, certain equipment, chattel paper, general intangibles (other than collateral securing the Notes on a first-priority basis), instruments, cash, deposits accounts, securities accounts, letter of credit rights and all supporting obligations, subject to permitted liens and certain exceptions. The Notes and related guarantees have a second-priority lien on such assets. The Notes are also secured by first-priority liens on substantially all of the other property and assets directly owned by the Company and the guarantors, including material owned real property, fixtures, intellectual property, capital stock of subsidiaries and certain equipment, subject to permitted liens and certain exceptions. The Revolving Facility Obligations are secured by a second-priority lien on such assets.

With respect to the assets that secure the Revolving Facility Obligations on a first-priority basis, the Notes are effectively junior to these obligations to the extent of the value of those assets. The rights of the holders of the Notes with respect to the collateral securing the Notes is limited pursuant to the terms of the Intercreditor Agreement. Under the Intercreditor Agreement, the lenders under the Revolving Facility have the ability to restrict your right to proceed against the collateral over which the Revolving Facility Agent has a first-priority lien, subject to certain limitations and exceptions.

The collateral that secures the Revolving Facility Obligations on a first-priority basis secures the Notes on a second-priority basis and is subject to any and all exceptions, defects, encumbrances, liens and other imperfections as may be or have been accepted by the lenders under the Revolving Facility and any other holders of first-priority liens on such collateral from time to time, whether existing on or after the date the Notes were issued. The existence of such exceptions, limitations, imperfections and liens could adversely affect the value of the collateral securing the Notes as well as the ability of the Collateral Agent to realize or foreclose on such collateral.

The value at any time of the collateral securing the Notes will depend on market and other economic conditions, including the availability of suitable buyers. By their nature, some or all of the pledged assets may be illiquid and may have no readily ascertainable market value. The value of the assets pledged as collateral for the Notes could be impaired in the future as a result of changing economic conditions, our failure to implement our business strategy, competition or other future trends. In the event of a foreclosure, liquidation, bankruptcy or similar proceeding, the proceeds from any sale or liquidation of the collateral may not be sufficient to pay our obligations under the Notes, in full or at all, together with our obligations under any other indebtedness that is secured on an equal and ratable basis by a first-priority lien on the collateral.

Accordingly, there may not be sufficient collateral to pay all of the amounts due on the Notes. Any claim for the difference between the amount, if any, realized by holders of the Notes from the sale of collateral securing the Notes and the obligations under the Notes will rank equally in right of payment with all of our other unsecured unsubordinated indebtedness and other obligations, including trade payables.

To the extent that third parties enjoy prior liens, such third parties may have rights and remedies with respect to the property subject to such liens that, if exercised, could adversely affect the value of the collateral. The Indenture

does not require that we maintain a current level of collateral or maintain a specific ratio of indebtedness to asset values. Releases of collateral from the liens securing the Notes will be permitted under some circumstances (as discussed below).

The Security Documents generally allow us and our subsidiaries to remain in possession of, retain exclusive control over, to freely operate, and to collect, invest and dispose of any income from, the collateral securing the Notes. In addition, to the extent we sell any assets that constitute collateral, the proceeds from any such sale will be subject to the first-priority or second-priority lien, as applicable, securing the Notes to which the underlying assets were subject. In addition, if we sell any of our assets which constitute

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collateral securing the Notes and, with the proceeds from such sale, purchase assets which would not constitute collateral, the holders of the Notes would not receive a security interest in such purchased assets.

There are circumstances, other than repayment or discharge of the Notes, under which the collateral securing the Notes and guarantees will be released automatically, without your consent or the consent of the Trustee.

Under various circumstances, all or a portion of the collateral may be released, including:

in whole or in part, as applicable, as to all or any portion of property subject to such liens which have been taken by eminent domain, condemnation or other similar circumstances;

in whole upon:

- satisfaction and discharge of the Indenture or as otherwise set forth in the Indenture;
- a legal defeasance or covenant defeasance of the Indenture as described in the Indenture; or
- the Conversion Termination Date;

in part, as to any property that (i) is sold, transferred or otherwise disposed of by us or any subsidiary guarantor (other than to us or another subsidiary guarantor) in a transaction not prohibited by the Indenture at the time of such sale, transfer or disposition or (ii) is owned or at any time acquired by a subsidiary guarantor that has been released from its guarantee in accordance with the Indenture, concurrently with the release of such guarantee; and

in part, in accordance with the applicable provisions of the Security Documents.

In addition, the guarantee of a subsidiary guarantor will be released in connection with a sale or merger of such subsidiary guarantor in a transaction not prohibited by the Indenture.

The Intercreditor Agreement limits the rights of the holders of the Notes and their control with respect to the collateral securing the Notes.

Under the terms of the Intercreditor Agreement, at any time that obligations that have the benefit of the first-priority liens are outstanding, any actions that may be taken in respect of the related collateral, including the ability to cause the commencement of enforcement proceedings against such collateral and to control the conduct of such proceedings, and the approval of amendments to and waivers of past defaults under, the collateral documents, will be at the direction of the collateral agent for the related obligations. The Revolving Facility Agent will direct all such actions with respect to the collateral securing the Revolving Facility Obligations on a first-priority basis, for so long as such Revolving Facility Obligations are outstanding. As a result, the Collateral Agent under the Security Documents will not have the ability to control or direct such actions with respect to such collateral, even if the rights of the holders of Notes are adversely affected. Additionally, to the extent such collateral is released from securing the first-priority lien obligations, the second-priority liens securing the Notes will also automatically be released to the extent the holders of the Notes are obligated to release such liens under the Indenture.

The imposition of certain permitted liens will cause the assets on which such liens are imposed to be excluded from the collateral securing the Notes and the guarantees. There are also certain other categories of property that are also excluded from the collateral.

The Indenture permits certain liens in favor of third parties to secure additional debt, including purchase money indebtedness and capitalized lease obligations, and any equipment subject to such liens will be automatically excluded from the collateral securing the Notes and the guarantees to the extent the agreements governing such indebtedness prohibit additional liens. Our ability to incur purchase money indebtedness and capitalized lease obligations is subject to the limitations as described in the Indenture. In addition, certain categories of assets are excluded from the collateral securing the Notes and the guarantees, as described in the Security Documents. Excluded assets include, but are not limited to, among other things, leaseholds (except to the extent required to perfect a security interest in as-extracted collateral included in the collateral) and the proceeds thereof. If an event of default occurs and the Notes are accelerated, the Notes and the guarantees will rank equally with the holders of other unsubordinated and unsecured indebtedness of the relevant entity with respect to such excluded property.

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The Notes are not secured by a portion of the capital stock of any foreign subsidiaries. In addition, the pledge of the securities of our subsidiaries that secures the Notes will exclude capital stock or any other securities of any of our subsidiaries in excess of the maximum amount of such capital stock or securities that could be included in the collateral without creating a requirement to file separate financial statements with the SEC for that subsidiary.

The Notes are secured by a pledge of the stock and other securities of our subsidiaries held by U.S. Concrete or the guarantors, other than securities in excess of 66% of the issued and outstanding equity interests of our foreign subsidiaries. Under the SEC regulations in effect on August 31, 2010, if the par value, book value as carried by us or market value (whichever is greatest) of the capital stock, other securities or similar ownership interests of a subsidiary of U.S. Concrete pledged as part of the collateral is greater than or equal to 20% of the aggregate principal amount of the Notes then outstanding, such a subsidiary would be required to provide separate financial statements to the SEC. Therefore, the Indenture and the Security Agreement provide that any capital stock and other securities of any of our subsidiaries will be excluded from the collateral to the extent the inclusion of such capital stock in the collateral would cause such subsidiary to file separate financial statements with the SEC pursuant to Rule 3-16 of Regulation S-X. It may be more difficult, costly and time consuming for holders of the Notes to foreclose on the assets of a subsidiary than to foreclose on its capital stock or other securities, so the proceeds realized upon any such foreclosure could be significantly less than those that would have been received upon any sale of the capital stock or other securities of such subsidiary.

State law may limit the ability of the Collateral Agent to foreclose on the real property and improvements and leasehold interests included in the collateral.

The Notes are secured by, among other things, liens on owned real property and improvements located in the States of California, New Jersey, Pennsylvania and Texas. The laws of those states may limit the ability of the Trustee and the holders of the Notes to foreclose on the improved real property collateral located in those states. Laws of those states govern the perfection, enforceability and foreclosure of mortgage liens against real property interests which secure debt obligations such as the Notes. These laws may impose procedural requirements for foreclosure different from and necessitating a longer time period for completion than the requirements for foreclosure of security interests in personal property. Debtors may have the right to reinstate defaulted debt (even if it has been accelerated) before the foreclosure date by paying the past due amounts and a right of redemption after foreclosure. Governing laws may also impose security first and one form of action rules which can affect the ability to foreclose or the timing of foreclosure on real and personal property collateral regardless of the location of the collateral and may limit the right to recover a deficiency following a foreclosure.

The holders of the Notes, the Trustee and the Collateral Agent also may be limited in their ability to enforce a breach of the no liens covenant. Some decisions of state courts have placed limits on a lenders ability to accelerate debt secured by real property upon breach of covenants prohibiting the creation of certain junior liens or leasehold estates may need to demonstrate that enforcement is reasonably necessary to protect against impairment of the lender s security or to protect against an increased risk of default. Although the foregoing court decisions may have been preempted, at least in part, by certain federal laws, the scope of such preemption, if any, is uncertain. Accordingly, a court could prevent the Trustee, the Collateral Agent and the holders of the Notes from declaring a default and accelerating the Notes by reason of a breach of this covenant, which could have a material adverse effect on the ability of holders to enforce the covenant.

Your rights in the collateral may be adversely affected by the failure to perfect security interests in certain collateral acquired in the future.

Applicable law requires that certain property and rights acquired after the grant of a general security interest can only be perfected at the time such property and rights are acquired and identified. The Trustee or the Collateral Agent may not monitor and we may not inform the Trustee or the Collateral Agent of any future acquisition of property and rights that constitute collateral and the necessary action may not be to properly perfect the security interest in such after acquired collateral. The Collateral Agent has no obligation to monitor the acquisition of additional property or rights that constitute collateral or the perfection of any security interest in favor of the Notes against third parties.

The collateral is subject to casualty risks and potential environmental liabilities.

We intend to maintain insurance or otherwise insure against hazards in a manner appropriate and customary for our business. There are, however, certain losses, including those due to fires, earthquakes, severe weather conditions and other natural disasters, that may be uninsurable or not economically insurable, in whole or in part. Insurance proceeds may not compensate us fully for our losses. If there is a complete or partial loss of any of the pledged collateral, the insurance proceeds may not be sufficient to satisfy all of our secured obligations, including the Notes, the related guarantees and the Revolving Facility.

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In the event of a total or partial loss to any of our facilities, certain items of equipment or inventory may not be easily replaced. Accordingly, even though there may be insurance coverage, the extended period needed to manufacture or obtain replacement units or inventory could cause significant delays.

Moreover, the Collateral Agent or the Revolving Facility Agent, as applicable, may need to evaluate the impact of potential liabilities before determining to foreclose on collateral consisting of real property because secured creditors that hold a security interest in real property may be held liable under environmental laws for the costs of remediating the release or threatened release of hazardous substances at such real property. Consequently, such agent may decline to foreclose on such collateral or exercise remedies in respect thereof if it does not receive indemnification to its satisfaction from the holders of the Notes and/or the creditors under the Revolving Facility, as applicable.

Federal and state statutes allow courts, under specific circumstances, to void guarantees and require holders of the Notes to return payments received from guarantors.

Under the federal bankruptcy law and comparable provisions of state fraudulent transfer laws, a guarantee could be voided, or claims in respect of a guarantee could be subordinated to all other debts of that guarantor, if the guarantor at the time it incurred the indebtedness evidenced by its guarantee:

- received less than reasonably equivalent value or fair consideration for the incurrence of its guarantee and was insolvent or rendered insolvent by reason of such incurrence;
- was engaged in a business or transaction for which the guarantor s remaining assets constituted unreasonably small capital; or
- intended to incur, or believed that it would incur, debts beyond its ability to pay those debts as they mature.

The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, a guarantor would be considered insolvent if:

- the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all of its assets;
- the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they become due.

We cannot assure you as to what standard a court would apply in determining whether a guarantor would be considered to be insolvent. If a court determined that a guarantor was insolvent after giving effect to the guarantee, it could void the guarantee of the Notes by a guarantor and require you to return any payments received from such guarantor.

Bankruptcy laws may limit your ability to realize value from the collateral.

The right of the Collateral Agent to repossess and dispose of the collateral upon the occurrence of an event of default under the Indenture is likely to be significantly impaired by applicable bankruptcy law if a bankruptcy case were to be commenced by or against us before the Collateral Agent repossessed and disposed of the collateral. Upon the commencement of a case under the Bankruptcy Code, a secured creditor such as the Collateral Agent is prohibited from repossessing its security from a debtor in a bankruptcy case, or from disposing of security repossessed from such debtor, without bankruptcy court approval, which may not be given. Moreover, the Bankruptcy Code permits the debtor to continue to retain and use collateral even though the debtor is in default under the applicable debt instruments, provided that the secured creditor is given adequate protection. The meaning of the term adequate protection may vary according to circumstances, but it is intended in general to protect the value of the secured creditor s interest in the collateral as of the commencement of the bankruptcy case and may include cash payments or the granting of additional security if and at such times as the bankruptcy court in its discretion determines that the

value of the secured creditor s interest in the collateral is declining during the pendency of the bankruptcy case. A bankruptcy court may determine that a secured creditor may not require compensation for a diminution in the value of its collateral if the value of the collateral exceeds the debt it secures.

In view of the lack of a precise definition of the term adequate protection and the broad discretionary power of a bankruptcy court, it is impossible to predict:

how long payments under the Notes could be delayed following commencement of a bankruptcy case;

whether or when the Collateral Agent could repossess or dispose of the collateral;

the value of the collateral at the time of the bankruptcy petition; or

whether or to what extent holders of the Notes would be compensated for any delay in payment or loss of value of the collateral through the requirement of adequate protection.

In addition, the Intercreditor Agreement provides that, in the event of a bankruptcy, the Collateral Agent may not object to a number of important matters with respect to the first-priority collateral of the lenders under the Revolving Facility following the filing of a bankruptcy petition so long as any obligation under the Revolving Facility is outstanding. After such a filing, the value of such collateral securing the Notes could materially deteriorate and you would be unable to raise an objection. The right of the holders of obligations secured by first-priority liens on the collateral to foreclose upon and sell the collateral upon the occurrence of an event of default also would be subject to limitations under applicable bankruptcy laws if we or any of our subsidiaries become subject to a bankruptcy proceeding.

Any disposition of the collateral during a bankruptcy case would also require permission from the bankruptcy court. Furthermore, in the event a bankruptcy court determines the value of the collateral is not sufficient to repay all amounts due in respect of the Revolving Facility Obligations and the Notes, the holders of the Notes would hold a secured claim to the extent of the value of the collateral to which the holders of the Notes are entitled (after the application of proceeds of the collateral securing Revolving Facility Obligations on a first-priority basis) and unsecured claims with respect to such shortfall. The Bankruptcy Code only permits the payment and accrual of post-petition interest, costs and attorney s fees to a secured creditor during a debtor s bankruptcy case to the extent the value of its collateral is determined by the bankruptcy court to exceed the aggregate outstanding principal amount of the obligations secured by the collateral.

Any future pledge of collateral may be avoidable in bankruptcy.

Any future pledge of collateral in favor of the Trustee or the Collateral Agent, including pursuant to any security documents delivered after the date of the Indenture, may be avoidable by the pledgor (a debtor in possession) or by its trustee in bankruptcy if certain events or circumstances exist or occur, including, among others, if (i) the pledgor is insolvent at the time of the pledge, (ii) the pledge permits the holders of the Notes to receive a greater recovery than if the pledge had not been given; and (iii) a bankruptcy proceeding in respect of the pledgor is commenced within 90 days following the pledge, or, in certain circumstances, a longer period.

Lien searches may not have revealed all liens on the collateral.

We cannot guarantee that the lien searches on the collateral securing the Notes revealed or will reveal any or all existing liens on such collateral. Any existing lien, including undiscovered liens, could be significant, could be prior in ranking to the liens securing the Notes and could have an adverse effect on the ability of the Collateral Agent to realize or foreclose upon the collateral securing the Notes.

Security over all of the collateral may not have been in place upon the date of issuance of the Notes or may not have been perfected on such date.

Certain security interests covering certain collateral, including mortgages on real property and related documentation, control agreements covering deposit accounts and securities accounts, and intellectual property security agreements covering trademarks may not have been in place on the date of issuance of the Notes or may not have been perfected on such date. To the extent a security interest in certain collateral was perfected following the date of the Indenture, it might be avoidable in bankruptcy. See above Any future pledge of collateral might be avoidable in bankruptcy.

The conversion rate of the Notes may not be adjusted for all dilutive events.

The conversion rate of the Notes is subject to adjustment for specified events, like the issuance of shares of Common Stock to the Management Equity Incentive Plan or upon the exercise of the warrants or stock dividends on the Common Stock, stock splits, combinations or similar events. The conversion rate will not be adjusted for other events, such as the issuance of Common Stock for cash, that may adversely affect the trading price of the Notes or the Common Stock. We cannot assure you that an event that adversely affects the value of the Notes, but does not result in an adjustment to the conversion rate, will not occur.

Upon conversion of any Notes, we may pay cash in lieu of issuing shares of Common Stock or a combination of cash and shares of Common Stock for the Accrued Interest associated with such Notes. Therefore, holders of Notes may receive no shares of Common Stock or fewer shares of Common Stock than the number of shares of Common Stock into which the Accrued Interest is convertible.

We have the right to satisfy the Accrued Interest portion of our conversion obligations to converting holders by issuing shares of Common Stock, by paying the cash value of the Accrued Interest or a combination thereof.

Accordingly, upon conversion of all or a portion of the Notes, holders may receive fewer shares of Common Stock relative to the conversion value of the Notes (including the amount of the Accrued Interest). Further, our liquidity may be reduced to the extent we choose to deliver cash rather than shares of Common Stock to satisfy our Accrued Interest payment obligations, if any, in connection with the conversion of any Notes.

If you do not convert your Notes following receipt of a Conversion Event Notice, your Notes will no longer be convertible after the 45th day following the date of such Conversion Event Notice. Any Notes outstanding after termination of such conversion rights,

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will likely be illiquid, will no longer bear interest and will be redeemable by the Company at par plus accrued interest to the Conversion Termination Date at any time prior to maturity.

Following the occurrence of a Conversion Event and the delivery of a Conversion Event Notice to holders of the Notes, any Notes not converted into Common Stock prior to the 45th day following the date of such Conversion Event Notice will cease to be convertible (subject to certain exceptions related to Notes that cannot be converted in full due to the Conversion Cap). After such 45th day, the Notes will cease to accrue interest and the collateral securing the Notes and the guarantees will be released. The Company may, after such date, redeem any remaining Notes at any time prior to maturity but there is no guarantee the Company would elect to do so. After such 45th day, substantially all of the restrictive covenants in the Indenture and certain events of default contained therein will be eliminated. The elimination of these covenants and other provisions will permit the Company to take certain actions that could increase the credit risks with respect to the Company, adversely affect the market price and credit rating of the remaining Notes or otherwise be materially adverse to the interest of holders of Notes, which would otherwise not have previously been permitted pursuant to the Indenture.

Holders who do not convert will have limited liquidity due to the small number of Notes that are likely to remain outstanding, will no longer receive interest on their Notes and may be required to hold their Notes until maturity.

An event that adversely affects the value of the Notes may occur, and that event may not constitute a Fundamental Change of Control.

Some significant restructuring transactions may not constitute a Fundamental Change of Control, in which case we would not be obligated to repurchase the Notes or pay the Fundamental Change of Control Make Whole.

Upon the occurrence of a Fundamental Change of Control, you have the right to require us to repurchase your Notes. Alternatively, you have the right to receive the Fundamental Change of Control Make Whole. However, the definition of Fundamental Change of Control is limited to only certain transactions or events. Therefore, the fundamental change of control provisions will not afford protection to holders of the Notes in the event of other transactions or events that do not constitute a Fundamental Change of Control but that could nevertheless adversely affect the Notes. For example, transactions such as leveraged recapitalizations, refinancings, restructurings, or acquisitions initiated by us may not constitute a Fundamental Change of Control requiring us to repurchase the Notes or pay the Fundamental Change of Control Make Whole. In the event of any such transaction, the holders would not have the right to require us to repurchase the Notes or to pay the Fundamental Change of Control Make Whole, even though each of these transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings or otherwise adversely affect the value of the Notes.

We may not be able to repurchase Notes or pay in cash amounts contemplated under the Indenture upon the occurrence of certain events.

Upon the occurrence of a Fundamental Change of Control, the holders of the Notes will require us to pay the Fundamental Change of Control Make Whole, which consists of the Make Whole Premium and the Make Whole Payment, or to repurchase Notes, at par plus accrued and unpaid interest thereon. If applicable, we may elect to pay the Make Whole Payment portion of the Fundamental Change of Control Make Whole in cash or in shares of Common Stock. Furthermore, upon the occurrence of a Conversion Event on or prior to August 31, 2012, in addition to the shares issued upon conversion or amounts received upon redemption, as applicable, the holders of the Notes will have the right to receive the Cash Conversion Amount, which we may elect to pay in cash or shares of Common Stock.

It is possible that we will not have sufficient funds at the time of the occurrence of a Fundamental Change of Control or Conversion Event to make any required repurchase of Notes or to pay the Make Whole Payment in cash, in connection with the occurrence of a Fundamental Change of Control, or to pay the Cash Conversion Amount in cash, in connection with the occurrence of a Conversion Event. In addition, we have, and may in the future incur, other indebtedness with similar change of control provisions permitting other creditors to accelerate or to require us to repurchase our indebtedness upon the occurrence of similar events or on some specific dates.

Holders of the Notes are not entitled to any rights with respect to the Common Stock but are subject to any changes made with respect to the Common Stock.

Holders of the Notes are not entitled to any rights with respect to the Common Stock, including voting rights and rights to receive any dividends or other distributions on the Common Stock (except that holders of the Notes will have the right to have the conversion rate adjusted in certain circumstances), but are subject to all changes affecting the Common Stock. Holders of the Notes will only be entitled to rights as a holder of Common Stock if and when we deliver shares of Common Stock in connection with conversion of the Notes. For example, in the event that an amendment is proposed to our certificate of incorporation or our by-laws

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requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of Common Stock on conversion, those converting holders of Notes will not be entitled to vote on the amendment, although they will nevertheless be subject to any changes in the powers, preferences or special rights of holders of Common Stock effected as a result of the amendment.

Holders of the Notes may be required to recognize income for tax purposes without a corresponding receipt of cash.

Holders of the Notes may be treated as receiving a constructive distribution (which may be taxed as a dividend or subject to U.S. withholding taxes) as a result of certain adjustments to the conversion rate of the Notes. A constructive distribution may give rise to taxable income without a corresponding receipt of cash, resulting in an out-of-pocket tax payment for some holders of the Notes. See Material U.S. Federal Income Tax Considerations. We particularly urge potential purchasers of Notes to consult their own tax advisor regarding the tax consequences of adjustments to the conversion rate of the Notes.

The Internal Revenue Service may challenge the status of the Notes as debt for U.S. federal income tax purposes.

The status of the Notes as debt for U.S. federal income tax purposes depends on a number of factors. While we intend to take the position that the Notes are debt for this purpose, there can be no assurance that the U.S. Internal Revenue Service (the IRS) will not successfully challenge this position. If the Notes were not treated as debt for U.S. federal income tax purposes could be materially different than those described under Material U.S. Federal Income Tax Considerations.

The ability to transfer the Notes may be limited by the absence of an active trading market.

We have not listed, and do not currently intend to list, the Notes for trading on any stock exchange or market or automated quotation system. Holders of the Notes may be required to bear the risk of their investment for an indefinite period of time. Historically, the market for non-investment grade debt has been subject to substantial volatility, which could adversely affect the prices at which you may sell your Notes. In addition, the price of the Notes may decline depending upon prevailing interest rates, the market for similar notes, our operating performance and other factors.

Rating agencies may provide unsolicited ratings on the Notes that could cause the market value or liquidity of the Notes to decline.

We have not requested a rating of the Notes from any rating agency and believe it is unlikely that the Notes will be rated. However, if one or more rating agencies rate the Notes and assign the Notes a rating lower than the rating expected by investors, or reduces their rating in the future, the market price or liquidity of the Notes could be harmed.

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Cautionary Note Regarding Forward-Looking Statements

This prospectus and the documents incorporated herein by reference contain forward-looking statements. These statements relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as may, will, should, expect, plan, anticipate, believe, estimate, predic continue, the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. All written and oral forward-looking statements made in connection with this prospectus that are attributable to us or persons acting on our behalf are expressly qualified in their entirety by the Risk Factors and Management s Discussion and Analysis of Financial Condition and Results of Operations sections included or incorporated by reference in this prospectus and other cautionary statements included or incorporated by reference in this prospectus. We are under no duty to update any of the forward-looking statements after the date of this prospectus to conform such statements to actual results or to changes in our expectations, except as required by federal securities laws.

There can be no assurance that other factors will not affect the accuracy of these forward-looking statements or that our actual results will not differ materially from the results anticipated in such forward-looking statements. Unpredictable or unknown factors we have not discussed in this prospectus also could have material adverse effects on actual results of matters that are the subject of our forward-looking statements. We do not intend to update our description of important factors each time a potential important factor arises. We advise our existing and potential security holders that they should (1) be aware that important factors to which we do not refer in this prospectus could affect the accuracy of our forward-looking statements and (2) use caution and common sense when considering our forward-looking statements.

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Use of Proceeds

The selling noteholders will receive all of the proceeds from the sale of the Notes offered by this prospectus. We will not receive any proceeds from the sale of our Notes by the selling noteholders.

Market for Common Equity and Related Stockholder Matters

On August 31, 2010, we and certain of our subsidiaries consummated a joint plan of reorganization under the Bankruptcy Code. Previously, our common stock (the Old Common Stock) ceased trading on the NASDAQ Global Market on May 10, 2010 and was traded in the over-the-counter market under the symbol RMIX.PK until August 31, 2010. On August 31, 2010, the Old Common Stock was cancelled and holders of the Old Common Stock received Class A Warrants and Class B Warrants. The holders of our previously outstanding 8.375% Senior Subordinated Notes due 2014 were issued 11.9 million shares of new Common Stock on August 31, 2010, which began trading on the over-the-counter Bulletin Board on October 15, 2010 under the symbol USCR. The new Common Stock was listed and began trading on the NASDAQ Capital Market on February 1, 2011 under the symbol USCR. The share price of the Old Common Stock bears no relation to the share price of the new Common Stock.

The closing price for our Common Stock on the NASDAQ Capital Market on August 31, 2011 was $5.60 per share. The following table sets forth, for the periods indicated, the range of high and low sales prices for our Common Stock:

	(Successor)		(Predecessor)	
	High	**Low**	**High**	**Low**
2010:				
First Quarter			$1.14	$0.32
Second Quarter			$1.02	$0.21
July 1 August 31			$0.24	$0.10
September 1 September 30				
October 15 December 31	$10.00	$6.76		
2011:				
First Quarter	$12.03	$7.75		
Second Quarter	$ 9.79	$8.04		
Third Quarter (through August 31)	$ 8.85	$4.53		

There were no trades of our Common Stock from August 31, 2010 through October 14, 2010.

	2009 (Predecessor)	
	High	**Low**
First Quarter	$3.53	$1.40
Second Quarter	$2.75	$1.76
Third Quarter	$2.01	$1.50
Fourth Quarter	$1.86	$0.64

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Selling Noteholders

The Notes to which this prospectus relates are being registered for sale by the selling noteholders named below. We have registered the Notes to permit the selling noteholders and certain of their transferees after the date of this prospectus to sell the Notes when they deem appropriate. We refer to all of these possible sellers as the selling noteholders in this prospectus. The selling noteholders may sell all, a portion or none of their Notes at any time.

The following table sets forth information with respect to the selling noteholders and the principal amount of Notes beneficially owned by each selling noteholder that may be offered under this prospectus. This information is based on information provided by, or on behalf of, each selling noteholder. The percentage of Notes beneficially owned before the offering is based on $55,000,000 aggregate principal amount of Notes outstanding as of August 31, 2011. The information regarding the principal amount of Notes owned after the offering assumes the sale of all Notes offered by each selling noteholder. In addition, a selling noteholder may have sold, transferred or otherwise disposed of all or a portion of that holder s Notes since the date on which they provided information for this table. We are relying on the selling noteholders to notify us of any changes in their beneficial ownership after the date they originally provided this information.

	Principal Amount of Notes Beneficially Owned Prior to the Offering (1)		Maximum Principal Amount of Notes that May be Sold	Principal Amount of Notes Beneficially Owned After the Offering (1)	
Name of Beneficial Owner	**Notes**	**%**	**Hereunder**	**Notes**	**%**
Whippoorwill Distressed Opportunity Fund, L.P.(2)	$2,381,000	4.3	$ 2,381,000		
Whippoorwill Offshore Distressed Opportunity Fund, Ltd.(3)	$2,781,000	5.1	$ 2,781,000		
Whippoorwill Institutional Partners, L.P. (4)	$ 535,000	1.0	$ 535,000		
Whippoorwill Associates, Inc. Profit Sharing Plan(5)	$ 44,000	0.1	$ 44,000		
WellPoint, Inc.(6)	$2,712,000	4.9	$ 2,712,000		

(1) The beneficial ownership of the Notes by the selling noteholders set forth in the table is determined in accordance with Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act), and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rule, beneficial ownership includes any Notes as to which the selling noteholder has sole or shared voting power or investment power and also any Notes that the selling noteholder has the right to acquire within 60 days.

(2) Shelley F. Greenhaus is the sole shareholder of Whippoorwill Associates, Inc., which is the managing member of and exercises control over Whippoorwill Distressed Opportunity Fund GP, LLC, which is the general partner of Whippoorwill Distressed Opportunity Fund, L.P. Shelley F. Greenhaus and Whippoorwill Associates, Inc. have shared voting and shared dispositive power with respect to the Notes. Whippoorwill Distressed Opportunity Fund, L.P. s address is c/o Whippoorwill Associates, Inc., 11 Martine Avenue, White Plains, NY 10606.

(3) Shelley F. Greenhaus is the sole shareholder of Whippoorwill Associates, Inc., which controls Whippoorwill Offshore Distressed Opportunity Fund, Ltd. Shelley F. Greenhaus and Whippoorwill Associates, Inc. have shared voting and shared dispositive power with respect to the Notes. Whippoorwill Offshore Distressed Opportunity Fund, Ltd. s address is c/o Whippoorwill Associates, Inc., 11 Martine Avenue, White Plains, NY 10606.

(4)

Shelley F. Greenhaus is the sole shareholder of Whippoorwill Associates, Inc., which is the managing member of and exercises control over Whippoorwill Institutional Partners GP, LLC, which is the general partner of Whippoorwill Institutional Partners, L.P. Shelley F. Greenhaus and Whippoorwill Associates, Inc. have shared voting and shared dispositive power with respect to the Notes. Whippoorwill Institutional Partners, L.P. s address is c/o Whippoorwill Associates, Inc., 11 Martine Avenue, White Plains, NY 10606.

(5) Shelley F. Greenhaus is the sole shareholder of Whippoorwill Associates, Inc., which controls Whippoorwill Associates, Inc. Profit Sharing Plan. Shelley F. Greenhaus and Whippoorwill Associates, Inc. have shared voting and shared dispositive power with respect to the Notes. Whippoorwill Associates, Inc. Profit Sharing Plan s address is c/o Whippoorwill Associates, Inc., 11 Martine Avenue, White Plains, NY 10606.

(6) The Notes that may be sold hereunder are held by WellPoint, Inc. in a discretionary account managed by Whippoorwill Associates, Inc. Shelley F. Greenhaus is the sole shareholder of Whippoorwill Associates, Inc. Shelley F. Greenhaus and Whippoorwill Associates, Inc. have shared voting and shared dispositive power with respect to the Notes. WellPoint, Inc. s address is c/o Whippoorwill Associates, Inc., 11 Martine Avenue, White Plains, NY 10606.

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Material Relationships with the Selling Stockholders

Registration Rights Agreement

In connection with the issuance of the Notes, we entered into a registration rights agreement, dated August 31, 2010 (the Registration Rights Agreement), under which we agreed, pursuant to the terms and conditions set forth therein, to register the Notes and the Common Stock into which the Notes convert. Under the Registration Rights Agreement, we were required to use commercially reasonable efforts to file a shelf registration statement, of which this prospectus forms a part, covering the resale by the Electing Holders (as defined in the Registration Rights Agreement) of the Notes that were Registrable Securities (as defined in the Registration Rights Agreement) on or prior to September 1, 2011. Under the Registration Rights Agreement, we were also required to file a registration statement by February 28, 2011 covering the resale of shares of Common Stock that are issuable or have been issued upon conversion of the Notes and shares of our Common Stock issued by us to pay interest, premium or other amounts to holders of the Notes, by the Electing Holders, on a delayed or continuous basis. We filed a registration statement covering the resale of shares of Common Stock that constituted Registrable Securities for the Electing Holders as described above, and it was declared effective by the SEC on April 8, 2011. We were required to pay special interest if we failed to file either shelf registration statement by the applicable deadline or if any registration statement required by the Registration Rights Agreement ceases or ceased to be effective for more than 45 days with respect to any Registrable Securities. Special interest accrued from March 1, 2011 to March 18, 2011 with respect to the registration statement that covered the resale of shares of the Common Stock at a rate of approximately $350 per day.

The selling noteholders are also entitled to unlimited piggyback rights on any registrations with respect to an underwritten offering of securities by the Company for its own account, subject to certain exceptions. The foregoing registration rights are subject to customary limitations and exceptions, including the Company s right to defer the registration in certain circumstances and certain cutbacks by the underwriters.

Under the Registration Rights Agreement, we have agreed to indemnify each selling noteholder and its partners, directors, officers, affiliates, stockholders, members, employees, agents, trustees and each person, if any, who controls such noteholder against certain liabilities, including specified liabilities under the Securities Act. We have also agreed to indemnify any underwriters for such selling noteholders and their officers, directors and employees and each person, if any, who controls such underwriters to the same extent as provided with respect to the indemnification of the selling noteholders. The selling noteholders have agreed to indemnify us for liabilities arising under the Securities Act with respect to written information furnished to us by them or to contribute with respect to payments in connection with such liabilities. We have agreed to pay all expenses in connection with this offering, but not including any broker s commission or underwriter s discount or commission.

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Plan of Distribution

We are registering the Notes covered by this prospectus to permit selling noteholders to conduct public secondary trading of these Notes from time to time after the date of this prospectus. We will not receive any of the proceeds of the sale of the Notes offered by this prospectus. The aggregate proceeds to the selling noteholders from the sale of the Notes will be the purchase price of the Notes less any discounts and commissions. A selling noteholder reserves the right to accept and, together with their agents, to reject, any proposed purchases of Notes to be made directly or through agents.

The Notes offered by this prospectus may be sold from time to time to purchasers:

directly by the selling noteholders and their successors, which include their donees, pledgees or transferees or their successors-in-interest, or

through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, commissions or agent s commissions from the selling noteholders or the purchasers of the Notes. These discounts, concessions or commissions may be in excess of those customary in the types of transactions involved.

The selling noteholders and any underwriters, broker-dealers or agents who participate in the sale or distribution of the Notes may be deemed to be underwriters within the meaning of the Securities Act. The selling noteholders identified as or affiliated with registered broker-dealers in the selling noteholders table above (under Selling Noteholders) are deemed to be underwriters with respect to securities sold by them pursuant to this prospectus. As a result, any profits on the sale of the Notes by such selling noteholders and any discounts, commissions or agent s commissions or concessions received by any such broker-dealer or agents may be deemed to be underwriting discounts and commissions under the Securities Act. Selling noteholders who are deemed to be underwriters within the meaning of Section 2(11) of the Securities Act will be subject to prospectus delivery requirements of the Securities Act. Underwriters are subject to certain statutory liabilities, including, but not limited to, Sections 11, 12 and 17 of the Securities Act.

The Notes may be sold in one or more transactions at:

fixed prices;

prevailing market prices at the time of sale;

prices related to such prevailing market prices;

varying prices determined at the time of sale; or

negotiated prices.

These sales may be effected in one or more transactions:

on any national securities exchange or quotation on which the Notes may be listed or quoted at the time of the sale;

in the over-the-counter market;

in transactions other than on such exchanges or services or in the over-the-counter market;

through the writing of options, whether such options are listed on an options exchange or otherwise;

ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

block trades in which the broker-dealer will attempt to sell the Notes as agent but may position and resell a portion of the block as principal to facilitate the transaction;

purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

an exchange distribution in accordance with the rules of the applicable exchange;

privately negotiated transactions;

through the settlement of short sales;

sales pursuant to Rule 144 or Rule 144A;

broker-dealers may agree with the selling noteholder to sell a specified number of Notes at a stipulated price per share;

through any combination of the foregoing; or

any other method permitted pursuant to applicable law.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

In connection with the sales of the Notes, the selling noteholders may enter into hedging transactions with broker-dealers or other financial institutions which in turn may:

engage in short sales of the Notes in the course of hedging their positions;

sell the Notes short and deliver the Notes to close out short positions;

loan or pledge the Notes to broker-dealers or other financial institutions that in turn may sell the Notes;

enter into option or other transactions with broker-dealers or other financial institutions that require the delivery to the broker-dealer or other financial institution of the Notes, which the broker-dealer or other financial institution may resell under the prospectus; or

enter into transactions in which a broker-dealer makes purchases as a principal for resale for its own account or through other types of transactions.

The Notes may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more of such firms. The obligations of underwriters or dealers to purchase the Notes offered will be subject to certain conditions precedent and the terms of any agreement entered into with the underwriters. Any public offering price and any discount or concession allowed or reallowed or paid by underwriters or dealers to other dealers may be changes from time to time.

To our knowledge, there are currently no plans, arrangements or understandings between any selling noteholders and any underwriter, broker-dealer or agent regarding the sale of the Notes by the selling noteholders.

We have not applied, and do not intend to apply, for listing of the Notes on any national securities exchange or automated quotation system. Our Common Stock is listed on the Nasdaq Capital Market under the symbol USCR.

There can be no assurance that any selling noteholder will sell any or all of the Notes under this prospectus. Further, we cannot determine whether any such selling noteholder will transfer, devise or gift the Notes by other means not described in this prospectus. In addition, any Notes covered by this prospectus that qualify for sale under Rule 144 of the Securities Act may be sold under Rule 144 rather than under this prospectus. The Notes covered by this prospectus may also be sold to non-U.S. persons outside the U.S. in accordance with Regulation S under the Securities Act rather than under this prospectus. The Notes may be sold in some states only through registered or licensed brokers or dealers. In addition, in some states the Notes may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification is available and complied with.

The selling noteholders and any other person participating in the sale of the Notes will be subject to the Exchange Act. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the Notes by the selling noteholders and any other such person. In addition, Regulation M may restrict the ability of any person engaged in the distribution of the Notes to engage in market-making activities with respect to the particular Notes being distributed. This may affect the marketability of

the Notes and the ability of any person or entity to engage in market-making activities with respect to the Notes.

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Underwriters, dealers or agents may be authorized to solicit offers by certain institutional investors to purchase securities from the selling noteholders pursuant to contracts providing for payment and delivery at a future date. Institutional investors with which these contracts may be made include, among others:

commercial and savings banks;

insurance companies;

pension funds;

investment companies;

educational and charitable institutions.

We have agreed to indemnify the selling noteholders against certain liabilities, including liabilities under the Securities Act.

The maximum compensation the selling noteholders will pay to underwriters in connection with any offering of the Notes will not exceed 8% of the maximum proceeds of such offering.

We have agreed to pay substantially all of the expenses incidental to the registration, offering and sale of the Notes to the public, including the payment of federal securities law and state blue sky registration fees, except that we will not bear any legal counsel fees (except as described below), underwriting fees, discounts or commissions or transfer taxes relating to the sale of the Notes.

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Description of Capital Stock

On August 31, 2010 (the Effective Date), we and certain of our subsidiaries (collectively, the Debtors) consummated the transactions contemplated by the Debtors Plan, pursuant to Chapter 11 of Title 11 of the United States Code, dated July 27, 2010, as confirmed by the Confirmation Order of the Bankruptcy Court entered on July 29, 2010, and emerged from Chapter 11 in accordance with the Plan.

On the Effective Date, the Old Common Stock was cancelled pursuant to the Plan. On the Effective Date, the Company issued an aggregate of approximately 11.9 million shares of common Stock, par value $0.001 per share (the Common Stock), pursuant to the Plan. In connection with the Plan, the Company adopted an Amended and Restated Certificate of Incorporation (the Certificate) and the Third Amended and Restated By-Laws (the By-laws), effective as of the Effective Date.

Set forth below is a description of the Common Stock and other relevant provisions of the Certificate and By-laws. This description of our capital stock is only a summary and is qualified by applicable law and by the provisions of our Certificate and By-laws, copies of which are available as set forth under Where You Can Find More Information.

Common Stock

The Certificate authorizes the issuance of 100,000,000 shares of Common Stock, par value $0.001 per share, and 10,000,000 shares of preferred stock, par value $0.001 per share (the Preferred Stock). All of the Common Stock issued under the Plan is fully paid and non-assessable.

Each share of Common Stock (1) will have one vote on all matters voted upon by the stockholders of the Company; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate (including any certificate of designations relating to any series of Preferred Stock), (2) affords no cumulative voting or preemptive rights and (3) is not convertible, redeemable, assessable or entitled to the benefits of any sinking or repurchase fund.

Holders of Common Stock will be entitled to dividends in such amounts and at such times as our Board in its discretion may declare out of funds legally available therefor, subject to the preferences that may apply to any shares of preferred stock outstanding at the time.

Preferred Stock

Pursuant to the Certificate, we are authorized to issue blank check preferred stock, which may be issued from time to time in one or more series upon authorization by the Board. The Board, without further approval of the stockholders, is authorized to fix the dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, and any other rights, preferences and restrictions applicable to each series of the Preferred Stock. The issuance of Preferred Stock, while providing flexibility in connection with possible acquisitions and other corporate purposes could, among other things, adversely affect the voting power of the holders of the Common Stock and, under certain circumstances, make it more difficult for a third party to gain control of us, discourage bids for the Common Stock at a premium or otherwise affect the market price of the Common Stock.

Anti-takeover Effects of the Certificate and the Bylaws

Some provisions of the Certificate and the Bylaws may be deemed to have an anti-takeover effect and may delay or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interest, including those attempts that might result in a premium over the market price for the shares held by stockholders.

These provisions include:

Board vacancies

The Certificate authorizes the Board to fill vacant directorships or increase the size of the Board, which may deter a stockholder from removing incumbent directors and simultaneously gaining control of the Board by filling the vacancies created by this removal with its own nominees.

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Cumulative voting

The Certificate does not grant our stockholders the right to cumulative voting in the election of directors. As a result, stockholders may not aggregate their votes for a single director.

Special meeting of stockholders

The Certificate provides that special meetings of our stockholders may be only be called by the Chairman of the Board or by the Board pursuant to a resolution a majority of the Board approves by an affirmative vote.

Authorized but unissued shares

Our authorized but unissued shares of Common Stock and Preferred Stock are available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of Common Stock and Preferred Stock could render more difficult or discourage an attempt to obtain control of a majority of the Common Stock by means of a proxy contest, tender offer, merger or otherwise.

Section 203 of Delaware General Corporation Law

As of the Effective Date, we were not subject to Section 203 of the Delaware General Corporation Law (as amended, the DGCL) because we did not have a class of voting stock that is listed on a national securities exchange or held of record by more than 2,000 stockholders and we had not elected by a provision in our original Certificate or any amendment thereto to be governed by Section 203 of the DGCL. Upon the listing of our Common Stock on the Nasdaq on February 1, 2011, we became subject to Section 203 of the DGCL, except that the restrictions contained in Section 203 of the DGCL do not apply if the business combination is with an interested stockholder who became an interested stockholder before the time that our Common Stock was listed on the Nasdaq.

Transfer Agent

American Stock Transfer & Trust Company, LLC is the transfer agent for the Common Stock.

Indemnification of Directors and Officers

The Bylaws provide that each person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Company or, while a director or officer of the Company, is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, is indemnified and held harmless, to the fullest extent permitted by applicable law, against all liability and loss suffered and expenses (including attorneys fees) reasonably incurred by such person.

The rights conferred in the Bylaws includes the right to have the Company pay the expenses (including attorneys fees) incurred in defending any such proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the indemnitee to repay all amounts advanced if it should be ultimately determined that such indemnitee is not entitled to be indemnified under the Bylaws or otherwise.

The Certificate provides that no director of the Company shall be personally liable to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, subject to certain exceptions.

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Description of the Notes

On August 31, 2010, U.S. Concrete, Inc. (the **Issuer**) issued $55,000,000 aggregate principal amount of its 9.5% Convertible Secured Notes due 2015 (the **Notes**) under an indenture (the **Indenture**), dated as of August 31, 2010, by and among itself, the Guarantors (as defined below) and U.S. Bank National Association, as trustee (the **Trustee**). The terms of the Notes include those expressly set forth in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the **Trust Indenture Act** or **TIA**).

The following description is a summary of the material provisions of the Notes, the Indenture, the Intercreditor Agreement and the Security Documents and does not purport to be complete. This summary is subject to the detailed provisions of, and is qualified in its entirety by reference to, the Notes, the Indenture, the Intercreditor Agreement and the Security Documents, including the definitions of certain terms used in the Indenture. We urge you to read these documents because they, and not this description, define your rights as a holder of the Notes. You may request a copy of the Notes, the Indenture, the Intercreditor Agreement and the Security Documents from us as described under Where You Can Find More Information and Incorporation by Reference.

For purposes of this description, references to the Issuer, we, our and us refer only to US. Concrete, Inc. and to its subsidiaries. You can find definitions of certain terms used in this description under the heading Certain Definitions.

General

The Notes:

The Notes:

- are the Issuer s senior secured obligations;
- rank senior in right of payment to any of the Issuer s existing and future Subordinated Indebtedness;
- rank equally in right of payment with all of the Issuer s existing and future senior Indebtedness;
- are effectively subordinated to all of the Issuer s obligations under the Issuer s ABL Facility, to the extent of the value of Collateral securing those obligations on a first-priority basis;
- rank effectively senior in right of payment to any of the Issuer s unsecured Indebtedness to the extent of the value of the Collateral for the Notes; and
- are structurally subordinated in right of payment to all existing and future Indebtedness and other liabilities of the Issuer s non-guarantor subsidiaries.

The Notes are convertible at any time on or prior to maturity into shares of Common Stock. Holders of Notes have the right to convert all or any portion of their Notes into the number of shares of Common Stock equal to the principal amount of the Notes to be converted divided by the Conversion Rate then in effect. The initial conversion rate is 95.23809524 shares of Common Stock per $1,000 principal amount of Notes. The Conversion Rate is subject to adjustment to prevent dilution resulting from stock splits, stock dividends, combinations or similar events. Upon conversion, the Issuer will deliver Common Stock as described below under Conversion Settlement Upon Conversion.

In connection with any conversion, Holders of the Notes to be converted will also have the right to receive Accrued Interest on such Notes to the date of conversion. The Issuer may elect to pay the Accrued Interest in cash or in shares of Common Stock. If the Issuer elects to satisfy its obligation to pay the Accrued Interest in shares, the number of shares issuable will be determined by dividing the Accrued Interest by 95% of the trailing 10-day VWAP of the Common Stock.

The Note Guarantees:

The Notes are fully and unconditionally guaranteed as to payment of principal, premium, if any, and interest when and as the same shall become due and payable by each of our existing and future direct or indirect domestic Restricted Subsidiaries (other than certain immaterial Restricted Subsidiaries) and any of the Issuer s other Subsidiaries that guarantee the ABL Facility. As of the date of

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this prospectus, all of the Issuer s Subsidiaries are Restricted Subsidiaries. Under the circumstances described below under Certain Covenants Limitations on Designation of Unrestricted Subsidiaries, the Issuer is permitted to designate certain of its Restricted Subsidiaries as Unrestricted Subsidiaries. The Unrestricted Subsidiaries will not be subject to the restrictive covenants of the Indenture. The Unrestricted Subsidiaries will not guarantee the Notes.

The Note Guarantees:

- are the Guarantors senior secured obligations;
- rank senior in right of payment to any of the Guarantors existing and future Subordinated Indebtedness;
- rank equally in right of payment with all of the Guarantors existing and future senior Indebtedness;
- are effectively subordinated to all of the Guarantors obligations under the ABL Facility, to the extent of the value of Collateral securing those obligations on a first-priority basis;
- rank effectively senior in right of payment to any of the Guarantors unsecured Indebtedness to the extent of the value of the Collateral for the Notes; and
- are structurally subordinated in right of payment to all existing and future Indebtedness and other liabilities of the Issuer s non-guarantor subsidiaries.

Release of a Guarantor

A Guarantor will be released from its obligations under its Note Guarantee and its obligations under the Indenture:

(i) in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor, by way of merger, consolidation or otherwise; *provided,* that the Net Available Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of the Indenture, including Certain Covenants Limitations on Asset Sales;

(ii) in connection with any sale or other disposition of Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Restricted Subsidiary, if the sale or other disposition does not violate the covenant described in Certain Covenants Limitations on Asset Sales and the Guarantor ceases to be a Restricted Subsidiary as a result of the sale or other disposition;

(iii) if such Guarantor is designated as an Unrestricted Subsidiary or otherwise ceases to be a Restricted Subsidiary, in each case in accordance with the provisions of the Indenture, upon effectiveness of such designation or when it first ceases to be a Restricted Subsidiary, respectively; or

(iv) if the Issuer exercises its legal defeasance option or its covenant defeasance option pursuant to Legal Defeasance and Covenant Defeasance, if the Issuer s obligations under the Indenture are discharged in accordance Discharge of Indenture or with respect to Remaining Notes, if a Conversion Event has occurred.

Payment on the Notes; Paying Agent and Registrar; Transfer and Exchange

The Issuer will pay the principal of (and premium, if any) and interest on the Notes in the manner described below. An installment of principal of, or interest on, the Notes will be considered paid on the date it is due if the Trustee or Paying Agent (other than the Issuer or an Affiliate thereof) holds on that date U.S. Legal Tender designated for and sufficient to pay the installment.

The Issuer will maintain or cause to be maintained an office or agency in the Borough of Manhattan, The City of New York, where (a) Notes may be presented or surrendered for registration of transfer or for exchange (**Registrar**), (b) Notes may, subject to the terms of the Notes, be presented or surrendered for payment (**Paying Agent**) and (c) notices and demands to or upon the Issuer in respect of the Notes and the Indenture may be served. The Issuer may act as Registrar or Paying Agent, except that for the purposes of Legal Defeasance and Covenant Defeasance and Discharge of Indenture, neither the Issuer nor any Affiliate of the Issuer may act as Paying Agent. The Registrar will keep a register of the Notes and of their transfer and exchange and the entries in such register will be conclusive as to the ownership of each of the Notes, absent manifest error. The Issuer, upon notice to the Trustee, may

have one or more co-registrars and one or more additional paying agents reasonably acceptable to the Trustee. The term Registrar includes any co-registrar and the term Paying Agent includes any additional paying agent. The Issuer initially appointed the Trustee

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as Registrar and Paying Agent until such time as the Trustee has resigned or a successor has been appointed. The Issuer may change any Paying Agent or Registrar without notice to any Holder.

A Holder may transfer or exchange notes at the office of the Registrar in accordance with the Indenture. The Registrar and the Trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed for any registration of transfer or exchange of Notes, but the Issuer may require a holder to pay a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith.

Without the prior written consent of the Issuer, the Registrar will not be required to register the transfer of or exchange of any Note (i) during a period beginning at the opening of business 15 days before the mailing of a notice of redemption of Notes and ending at the Close of Business on the day of such mailing, (ii) selected for redemption in whole or in part pursuant to Conversion, except the unredeemed portion of any Note being redeemed in part, and (iii) beginning at the opening of business on any Record Date and ending on the Close of Business on the related Interest Payment Date.

Any Holder of a beneficial interest in a Global Note, by acceptance of such beneficial interest, agrees that transfers of beneficial interests in such Global Notes may be effected only through a book-entry system maintained by the Holder of such Global Note (or its agent) in accordance with the applicable legends thereon, and that ownership of a beneficial interest in the Note shall be required to be reflected in a book-entry system.

The registered Holder of a Note may be treated as the owner of it for all purposes.

Maturity; Interest

The Notes will mature on August 31, 2015.

The Notes bear interest at rate of 9.5% per annum from August 31, 2010 until maturity. The Issuer will pay interest quarterly on March 1, June 1, September 1 and December 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each an **Interest Payment Date**). Interest on the Notes accrues from the most recent date to which interest has been paid or, if no interest has been paid, from the date of original issuance. The Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand to the extent lawful at the rate equal to 2% per annum in excess of the then applicable rate on the Notes; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest on the Notes is computed on the basis of a 360-day year of twelve 30-day months.

The Issuer will pay interest on the Notes to the Persons who are registered Holders of Notes at the Close of Business on the February 15, May 15, August 15 or November 15 next preceding the Interest Payment Date (each a **Record Date**), even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in the Indenture with respect to defaulted interest. The Issuer will pay principal, premium, if any, and interest on the Notes in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts (**U.S. Legal Tender**). Principal, premium, if any, and interest on the Notes will be payable at the office or agency of the Issuer maintained for such purpose except that, at the option of the Issuer, the payment of interest may be made by check mailed to the Holders of the Notes at their respective addresses set forth in the register of Holders of Notes; *provided,* that for Holders that have given wire transfer instructions to the Issuer at least three Business Days prior to the applicable payment date, the Issuer will make all payments of principal, premium and interest by wire transfer of immediately available funds to the accounts specified by the Holders thereof. Until otherwise designated by the Issuer, the Issuer s office or agency in New York will be the office of the Trustee maintained for such purpose.

All references to interest with respect to the Notes, unless the context requires otherwise, includes interest and Additional Interest, if any, on the Notes.

Security

The Notes and the Guarantees are secured by first-priority liens on certain of the property and assets directly owned by the Issuer and each of the Guarantors, including material owned real property, fixtures, intellectual property, capital stock of subsidiaries and certain equipment, subject to permitted liens (including a second-priority lien in favor

of the Bank Collateral Agent) and certain exceptions (as described in the Security Documents). Obligations under the ABL Facility and those in respect of hedging and cash

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management obligations owed to the lenders (and their affiliates) party to the ABL Facility are secured by a second-priority lien on such collateral.

The Notes and the Guarantees are also secured by a second-priority lien on the assets of the Issuer and the Guarantors securing the ABL Obligations (as defined below) on a first-priority basis, including, inventory (including as extracted collateral), accounts, certain specified mixture trucks, chattel paper, general intangibles (other than collateral securing the Notes on a first-priority basis), instruments, documents, cash, deposit accounts, securities accounts, commodities accounts, letter of credit rights and all supporting obligations and related books and records and all proceeds and products of the foregoing, subject to permitted liens and certain exceptions, as described in the Security Documents.

A material portion of the collateral which secures the Notes secures the ABL Obligations on a first-priority basis and secures the Notes on a second-priority basis. The remaining collateral which secures the Notes (on a first-priority basis) secures ABL Obligations on a second-priority basis. See Risk Factors Risks Related to the Notes and the Common Stock There may not be sufficient collateral to pay all or any of the Notes.

Intercreditor Agreement

On August 31, 2010, the Issuer and the Guarantors entered into the Intercreditor Agreement. The Intercreditor Agreement sets forth the terms of the relationship between the holders of the ABL Obligations and the holders of Notes Obligations (as defined below).

Restrictions on Claims Subject to Priority Treatment

The Intercreditor Agreement provides that the holders of the ABL Obligations are entitled to a first priority lien (subject to certain exceptions) on the ABL Collateral to secure (a) up to $80,000,000, less certain permanent commitment reductions under the ABL Facility as a result of the prepayment of such obligations with the net proceeds from any asset dispositions, of the principal amount of revolving loans and letters of credit, plus (b) interest, indemnities, fees, expenses and other obligations incurred under the ABL Facility and the documents, agreements and instruments governing the ABL Facility (collectively, the **ABL Documents**), plus (c) cash management obligations and obligations in respect of hedging arrangements owed to a lender under the ABL Facility or any affiliate of a lender (collectively, the **ABL Obligations**). The holders of Notes are entitled to a first priority lien (subject to certain exceptions) on the Notes Collateral to secure the principal, interest, fees and other obligations incurred by the Issuer and its subsidiaries under the Note Documents (collectively, the **Notes Obligations**). The holders of the ABL Obligations are also be entitled to a second priority lien (subject to certain exceptions) on the Notes Collateral to secure the ABL Obligations. The holders of the Notes Obligations are also be entitled to a second priority lien (subject to certain exceptions) on the ABL Collateral to secure the Notes Obligations.

Restrictions on Enforcement of Liens

The Intercreditor Agreement provides that so long as the ABL Obligations or Notes Obligations, as applicable, remain outstanding, whether or not any insolvency or liquidation proceeding has been commenced by or against the Issuer or any other Guarantor, the Noteholder Collateral Agent, the holders of the Notes, the Bank Collateral Agent and holders of ABL Obligations will not, as applicable, exercise or seek to exercise any rights or remedies (including setoff) with respect to any Collateral in respect of which such Person does not have a first priority lien.

The Intercreditor Agreement provides that the Bank Collateral Agent (on behalf of the holders of the ABL Obligations) or Noteholder Collateral Agent (on behalf of the holders of the Notes Obligations), as applicable, shall have the exclusive right, to enforce rights, exercise remedies (including setoff) and make determinations regarding the release and disposition with respect to the Collateral in which the Bank Collateral Agent or the Noteholder Collateral Agent, as applicable, has a first priority secured lien, without any consultation with or the consent of such other Person, subject to limitations and exceptions set forth in the Intercreditor Agreement.

The Intercreditor Agreement provides that, until the repayment in full and termination of the ABL Obligations has occurred, the Noteholder Collateral Agent and the holders of the Notes Obligations shall not take any action that would hinder, delay, limit or prohibit any exercise of remedies under the ABL Facility or other ABL Documents with respect to the ABL Collateral, including any collection, sale, lease, exchange, transfer or other disposition of the ABL Collateral, whether by foreclosure or otherwise, or that would challenge or contest such lien or that would subordinate the priority of the liens securing the ABL Obligations in respect of the ABL Collateral to the liens securing the Notes

Obligations or make the liens on the ABL Collateral securing the Notes Obligations equal ranking to the liens securing the ABL Obligations therein.

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The Intercreditor Agreement provides that, until the repayment in full and termination of the Notes Obligations has occurred, the Bank Collateral Agent and the holders of the ABL Obligations shall not take any action that would hinder, delay, limit or prohibit any exercise of remedies under the Notes or Security Documents with respect to the Notes Collateral, including any collection, sale, lease, exchange, transfer or other disposition of the Notes Collateral, whether by foreclosure or otherwise, or that would challenge or contest such lien or that would subordinate the priority of the liens securing the Notes Obligations in respect of the Notes Collateral to the liens securing the ABL Obligations or make the liens on the Notes Collateral securing the ABL Obligations equal ranking to the liens securing the Notes Obligations therein; provided, that the Intercreditor Agreement provides the Bank Collateral Agent the right of access to the Notes Collateral to process and prepare the ABL Collateral for sale and to sell or remove the ABL Collateral for a period of 120 days from the earlier of (i) the Bank Collateral Agent giving written notice to the Noteholder Collateral Agent of its election to request access to any parcel or item of Notes Collateral and (ii) the Bank Collateral Agent receiving written notice from the Noteholder Collateral Agent that the Noteholder Collateral Agent has acquired control or possession of relevant Notes Collateral or has, through the exercise of remedies or otherwise, sold such Notes Collateral to any third party purchaser.

Insolvency or Liquidation Proceedings

Until the repayment in full and termination of the ABL Obligations has occurred, if the Issuer or any Guarantor is subject to any insolvency or liquidation proceeding and the Bank Collateral Agent (acting at the direction of the requisite holders of ABL Obligations) permits:

(1) the use of cash collateral constituting ABL Collateral; or

(2) the Issuer or any Guarantor to obtain financing, whether from the holders of ABL Obligations or any other third party under applicable bankruptcy law secured by the Collateral (each, a Post-Petition ABL Financing);

then the Noteholder Collateral Agent and the holders of Notes Obligations agree:

(a) that they will be deemed to have consented to (and will not oppose or raise any objection to or contest (or join with or support any third party opposing, objecting to or consenting) as a result of failure to provide adequate protection) such use of cash collateral or Post-Petition ABL Financing, subject to the limitations and exceptions set forth in the Intercreditor Agreement; and

(b) to the extent the liens on the ABL Collateral securing the ABL Obligations are subordinated to or pari passu with such Post-Petition ABL Financing, the liens securing the Notes Obligations on such ABL Collateral shall be deemed to be subordinated to (i) the liens securing such Post-Petition ABL Financing (and all obligations relating thereto) to the same extent and on the same terms and conditions as the liens securing the Notes Obligations are subordinated to the liens securing the ABL Obligations, (ii) any adequate protection provided to the Bank Collateral Agent or the holders of ABL Obligations and (iii) carve-out for professional and customary fees and expenses agreed to by the Bank Collateral Agent or the holders of ABL Obligations and approved by the relevant bankruptcy court.

Until the repayment in full and termination of the Notes Obligations has occurred, if the Issuer or any Guarantor is subject to any insolvency or liquidation proceeding and the Noteholder Collateral Agent (acting at the direction of the requisite holders of Notes Obligations) permits:

(1) the use of cash collateral constituting Notes Collateral; or

(2) the Issuer or any Guarantor to obtain financing, whether from the holders of Notes Obligations or any other third party under applicable bankruptcy law secured by the Collateral (each, a Post-Petition Notes Financing);

then the Bank Collateral Agent and the holders of ABL Obligations agree:

(a) that they will be deemed to have consented to (and will not oppose or raise any objection to or contest (or join with or support any third party opposing, objecting to or contesting)) such use of cash collateral or Post-Petition Notes Financing, subject to the limitations and exceptions set forth in the Intercreditor Agreement; and

(b) to the extent the liens on the Notes Collateral securing the Notes Obligations are subordinated to or pari passu with such Post-Petition Notes Financing, the liens securing the ABL Obligations on such Notes Collateral shall be deemed to be subordinated to (i) the liens securing such Post-Petition Notes Financing (and all obligations relating thereto) to the same extent and on the same terms and conditions as the liens

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securing the ABL Obligations are subordinated to the loans securing the Notes Obligations, (ii) any adequate protection provided to the Noteholder Collateral Agent or the holders of Notes Obligations and (iii) carve-out for professional and customary fees and expenses agreed to by the Noteholder Collateral Agent or the holders of Notes Obligations and approved by the relevant bankruptcy court.

Each of the Bank Collateral Agent, the holders of the ABL Obligations, the Noteholder Collateral Agent and the holders of Notes agree that they will raise no objection or oppose a sale or other disposition of any Collateral free and clear of its second priority liens or other claims under Section 363 of the Bankruptcy Law if the holder of the first priority secured lien in such Collateral has consented to such sale or disposition of such assets and the Person holding a second priority lien in the Collateral will be deemed to have consented under Section 363 of the United States Bankruptcy Code (and otherwise) to any sale supported by the Person holding the first priority secured lien in such Collateral and to have released their liens in such assets; provided, that the Bank Collateral Agent must receive at least 60 days prior notice of any sale of real property.

Until the repayment in full of the ABL Obligations, the Noteholder Collateral Agent and holders of Notes Obligations agree that none of them shall seek relief from the automatic stay of Section 362(a) of the Bankruptcy Law or from any other stay in any insolvency or liquidation proceeding in respect of the ABL Collateral, without the prior written consent of the Bank Collateral Agent and shall provide at least at least 30 days written notice prior to seeking any such relief with respect to the Collateral (unless otherwise agreed). Until the repayment in full of the Notes Obligations, the Bank Collateral Agent and holders of ABL Obligations agree that none of them shall seek relief from the automatic stay of Section 362(a) of the Bankruptcy Law or from any other stay in any insolvency or liquidation proceeding in respect of the Notes Collateral, without the prior written consent of the Noteholder Collateral Agent and shall provide at least at least 30 days written notice prior to seeking any such relief with respect to the Collateral (unless otherwise agreed).

The Noteholder Collateral Agent, the holders of Notes, the Bank Collateral Agent and the holders of the ABL Obligations agree that none of them shall oppose, object to or contest (or join with or support any third party opposing, objecting to or contesting) (i) any request by such Person for adequate protection in any insolvency or liquidation proceeding (or any granting of such request) in respect of the Collateral in which such Person has a first priority secured lien or (ii) any objection by the such Person to any motion, relief, action or proceeding based on such Person claiming a lack of adequate protection in respect of the Collateral in which such Person has a first priority secured lien.

Order of Application

The Intercreditor Agreement provides that, (i) any proceeds of any ABL Collateral pursuant to the enforcement of the ABL Facility or any ABL Document or the exercise of any remedial provision thereunder, shall be applied (in each case until such amounts are satisfied in full): *first*, to the costs and expenses of the Bank Collateral Agent and the holders of the ABL Obligations in connection with such enforcement; *second*, to the ABL Obligations in such order as specified in the ABL Facility (excluding any amounts in excess of the cap on ABL Obligations); *third*, to the Notes Obligations; and *fourth*, to any amounts in excess of the cap on ABL Obligations, and (ii) any proceeds of any Notes Collateral pursuant to the enforcement of the Notes or any Security Document or the exercise of any remedial provision thereunder, shall be applied (in each case until such amounts are satisfied in full): *first*, to the costs and expenses of the Noteholder Collateral Agent and the holders of the Notes Obligations in connection with such enforcement; *second*, to the Notes Obligations in such order as specified in the Notes; and *third*, to the ABL Obligations (including any amounts in excess of the cap on ABL Obligations). To the extent any excess proceeds remain after the above application, the Bank Collateral Agent or Noteholder Collateral Agent, as applicable, shall deliver to such other Person any proceeds of such Collateral held by it in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

Release of Liens on Collateral

The Intercreditor Agreement provides that the (i) second priority lien held by the Noteholder Collateral Agent, on behalf of the holders of the Notes Obligations, on the ABL Collateral shall be automatically released upon the release, sale or disposition of the ABL Collateral which results in a release of the lien granted to the Bank Collateral Agent, on behalf of the holders of the ABL Obligations under the ABL Documents and (ii) second priority lien held

by the Bank Collateral Agent, on behalf of the holders of the ABL Obligations, on the Notes Collateral shall be automatically released upon the release, sale or disposition of the Notes Collateral which results in a release of the lien granted to the Noteholder Collateral Agent, on behalf of the holders of the Notes Obligations under the Indenture and Security Documents. In order to effect such foregoing releases, the parties shall promptly execute and deliver any release documents and instruments as the other shall request.

Amendment of Security Documents

The Intercreditor Agreement provides that in the event the Bank Collateral Agent or the other holders of ABL Obligations and the relevant guarantors enter into any amendment, waiver or consent in respect of any guarantee or any security or collateral

document with respect to the ABL Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any guarantee or any security or collateral document with respect to the ABL Documents or changing in any manner the rights of the Bank Collateral Agent, the other holders of ABL Obligations, the Issuer or any other guarantor thereunder, then to the extent such amendment, waiver or consent is with respect to the ABL Collateral, it shall apply automatically to any comparable provision of the Indenture and the comparable Security Document without the consent of the Noteholder Collateral Agent or the holders of the Notes Obligations and without any action by the Noteholder Collateral Agent, the Issuer or any other guarantor, provided, that, (i) no such amendment, waiver or consent shall have the effect of removing assets except to the extent that a release of such lien is permitted by the Intercreditor Agreement; and (ii) notice of such amendment, waiver or consent shall have been given to the Noteholder Collateral Agent no later than 30 days thereafter (although the failure to give any such notice shall in no way affect the effectiveness of any such amendment, waiver or consent).

The Intercreditor Agreement provides that in the event the Noteholder Collateral Agent or the other holders of Notes Obligations and the relevant guarantors enter into any amendment, waiver or consent in respect of any guarantee or any security or collateral document with respect to the Indenture and/or the Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any guarantee or any security or collateral document with respect to the Indenture and/or the Security Documents or changing in any manner the rights of the Noteholder Collateral Agent, the other holders of Notes Obligations, the Issuer or any other guarantor thereunder, then to the extent such amendment, waiver or consent is with respect to the Notes Collateral, it shall apply automatically to any comparable provision of the ABL Documents without the consent of the Bank Collateral Agent or the holders of the ABL Obligations and without any action by the Bank Collateral Agent, the Issuer or any other guarantor, provided, that, (i) no such amendment, waiver or consent shall have the effect of removing assets except to the extent that a release of such lien is permitted by the Intercreditor Agreement; and (ii) notice of such amendment, waiver or consent shall have been given to the Bank Collateral Agent no later than 30 days thereafter (although the failure to give any such notice shall in no way affect the effectiveness of any such amendment, waiver or consent).

Purchase Option

If an event of default has occurred and is continuing and remains uncured or unwaived for at least 30 days with respect to the ABL Obligations or the Notes Obligations, as the case may be, then all or a portion of the holders of the ABL Obligations or of the holders of the Notes Obligations, as the case may be, shall have the option at any time upon 5 business days notice given (i) to the Noteholder Collateral Agent (in the case of the holders of the ABL Obligations) to purchase all of the Notes Obligations or (ii) to the Bank Collateral Agent (in the case of the holders of the Notes Obligations) to purchase all of the ABL Obligations, such purchase to be consummated in either case within 20 days after notice of election of such option. The purchase price shall be equal to the full amount of all ABL Obligations or Notes Obligations, as applicable, then outstanding and unpaid (including principal, interest, fees and expenses but excluding, any prepayment, make whole payment, termination or similar fees) and, with respect to the purchase of the ABL Obligations, shall include the delivery of cash collateral to the Bank Collateral Agent, in a manner and in such amounts as the Bank Collateral Agent determines is reasonably necessary to provide security for any issued and outstanding letter of credit, hedging obligations and cash management obligations comprising part of the ABL Obligations.

Release of Collateral

Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents, the Intercreditor Agreement or the Indenture. The Issuer and the Guarantors will be entitled to a release of property and other assets included in the Collateral from the Liens securing the Notes under one or more of the following circumstances:

(i) to enable the Issuer or any Guarantor to sell, exchange or otherwise dispose of any of the Collateral to the extent not prohibited under Certain Covenants Limitations on Asset Sales;

(ii) in the case of a Guarantor that is released from its Guarantee with respect to the Notes, the release of the property and assets of such Guarantor;

(iii) pursuant to an amendment or waiver in accordance with Amendment, Supplement and Waiver;

(iv) pursuant to the terms of the Intercreditor Agreement; or

(v) if the Notes have been discharged or defeased pursuant to Discharge of Indenture or Legal Defeasance and Covenant Defeasance; *provided*, that in the case of any release in whole pursuant to clauses (i), (ii) and (iii) above, all amounts owing at such time to the Trustee under the Indenture, the Notes, the Notes Guarantees, the Security Documents and the Intercreditor Agreement have been paid.

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To the extent applicable (if the Indenture is qualified under the TIA), the Issuer will cause TIA § 313(b), relating to reports, and TIA § 314(d), relating to the release of property or securities subject to the Lien of the Security Documents, to be complied with. Any release of Collateral permitted by the terms described above will be deemed not to impair the Liens under the Indenture, the Collateral Agreement and the other Security Documents in contravention thereof. Any certificate or opinion required by TIA § 314(d) may be made by an officer or legal counsel, as applicable, of the Issuer except in cases where TIA § 314(d) requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected by or reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary in this paragraph, the Issuer will not be required to comply with all or any portion of TIA § 314(d) if it reasonably determines that under the terms of TIA § 314(d) or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including no action letters or exemptive orders, all or any portion of TIA § 314(d) is inapplicable to any release or series of releases of Collateral. In addition, and without limiting the generality of the foregoing, the Subsidiaries of the Issuer may, among other things, without any release or consent by the Trustee (and without the delivery of any Officers Certificate or any other documents under the Indenture, except as specified in this paragraph, but otherwise in compliance with the covenants of the Indenture and the Security Documents, conduct ordinary course activities with respect to the Collateral including, without limitation (i) selling or otherwise disposing of, in any transaction or series of related transactions, any property subject to the Liens and security interests created by the Indenture or any of the Security Documents which has become worn out, defective or obsolete or not used or useful in the business; (ii) abandoning, terminating, canceling, releasing or making alterations in or substitutions of any leases or contracts subject to the Liens and security interests created by the Security Documents; (iii) surrendering or modifying any franchise, license or permit subject to the Liens and security interests created by the Security Documents which it may own or under which it may be operating; (iv) altering, repairing, replacing or changing the location or position of and adding to its structures, machinery, systems, equipment, fixtures and appurtenances; (v) granting a license of any intellectual property; (vi) selling, transferring or otherwise disposing of inventory in the ordinary course of business; (vii) collecting accounts receivable in the ordinary course of business or selling, liquidating, factoring or otherwise disposing of accounts receivable in the ordinary course of business; (viii) making cash payments (including for the repayment of Indebtedness or interest and in connection with the Issuer s cash management activities) from cash that is at any time part of the Collateral in the ordinary course of business that are not otherwise prohibited by the Indenture or the Security Documents; and (ix) abandoning any intellectual property which is no longer used or useful in the Issuer s business. The Issuer must deliver to the Trustee within 30 calendar days following the end of each fiscal year (or such later date as the Trustee shall agree), an Officers Certificate to the effect that all releases and withdrawals during the preceding fiscal year in which no release or consent of the Trustee was obtained in the ordinary course of the Issuer s and its Subsidiaries business were not prohibited by the Indenture. The Trustee will execute and deliver to the Issuer all documents reasonably requested to evidence any such releases of Collateral. In addition, in lieu of releasing the Liens created by any of the Mortgages, the Trustee or Collateral Agent will, at the request of the Issuer, to the extent necessary to facilitate future savings of mortgage recording tax in states that impose such taxes, assign such Liens to any such new lender or collateral agent.

Sufficiency of Collateral

In the event of foreclosure on the Collateral, the proceeds from the sale of the Collateral may not be sufficient to satisfy in full the obligations under the Notes and the ABL Obligations. The amount to be received upon such a sale would be dependent on numerous factors, including but not limited to the timing and the manner of the sale. In addition, the book value of the Collateral should not be relied on as a measure of realizable value for such assets. By its nature, portions of the Collateral may be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral can be sold in a short period of time in an orderly manner. The Collateral includes assets that may only be usable, and thus retain value, as part of the existing operating business of the Issuer and Subsidiaries. Accordingly, any such sale of the Collateral separate from the sale of certain of the operating businesses of Issuer and Subsidiaries may not be feasible or of significant value.

Certain Bankruptcy Limitations

The right of the Noteholder Collateral Agent to take possession and dispose of the Collateral following an Event of Default is likely to be significantly impaired by applicable bankruptcy law if a bankruptcy proceeding were to be commenced by or against the Issuer or the Guarantors prior to the Noteholder Collateral Agent having taken possession and disposed of the Collateral. Under the U.S. Bankruptcy Code, a secured creditor is prohibited from taking its security from a debtor in a bankruptcy case, or from disposing of security taken from such debtor, without bankruptcy court approval. Moreover, the U.S. Bankruptcy Code permits the debtor in certain circumstances to continue to retain and to use collateral owned as of the date of the bankruptcy filing (and the proceeds, products, offspring, rents or profits of such Collateral) even though the debtor is in default under the applicable debt instruments; provided that the secured creditor is given adequate protection. The meaning of the term adequate protection may vary according to circumstances. In view of the lack of a precise definition of the term adequate protection and the broad discretionary powers of a bankruptcy court, it is impossible to predict how long payments under the Notes could be delayed following commencement of a bankruptcy case, whether or when the Noteholder Collateral Agent could repossess or dispose of the Collateral, or the value of the Collateral at the time of the commencement of such case whether or to what extent holders would be compensated for any delay in payment or loss of value of the Collateral through the requirement of adequate protection.

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Furthermore, in the event a bankruptcy court determines the value of the Collateral (after giving effect to any prior Liens) is not sufficient to repay all amounts due on the Notes and any other pari passu obligations, the holders of the Notes and such pari passu obligations would hold secured claims to the extent of the value of the Liens on the Notes Collateral, and would hold unsecured claims with respect to any shortfall.

Applicable federal bankruptcy laws permit the payment and/or accrual of post-petition interest, costs and attorneys fees during a debtor s bankruptcy case only to the extent the claims are oversecured or the debtor is solvent at the time of reorganization. In addition, if the Issuer or the Guarantors were to become the subject of a bankruptcy case, the bankruptcy court, among other things, may avoid certain prepetition transfers made by the entity that is the subject of the bankruptcy filing, including, without limitation, transfers held to be preferences or fraudulent conveyances.

Redemption

Optional Redemption

On or after the Conversion Termination Date, the Issuer may redeem outstanding Notes, in whole or in part, at any time or from time to time, subject to the procedures described below, at a price (the **Redemption Price**) equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the Conversion Termination Date, plus, the Cash Conversion Amount, if any, in respect of the Notes to be redeemed; *provided*, that Notes subject to redemption will not include any Notes specified for conversion pursuant to an Election Notice as described in Conversion Event; Termination of Conversion Rights. Subject to the Conversion Cap, the Issuer may elect to pay the Cash Conversion Amount, in whole or in part, in shares of its Common Stock if certain conditions specified in the Indenture have been satisfied.

If the Issuer exercises its right to redeem the Notes, the Issuer will mail a notice of such redemption at least fifteen (15) and not more than forty-five (45) days prior to the Redemption Date to the Holders of the Notes to be redeemed.

In addition to any information required by law, each notice of redemption will specify the following:

(i) the principal amount of Notes to be redeemed,

(ii) the date fixed for redemption;

(iii) the Redemption Price at which such Notes are to be redeemed (including the Cash Conversion Amount);

(iv) the place or places of payment, and that payment will be made upon presentation and surrender of the physical certificate or certificates representing such Notes;

(v) that the Redemption Price will be paid as specified in the notice and whether the Cash Conversion Amount will be paid in cash or in shares of Common Stock or a combination of cash and shares of Common Stock, and if payable all or in part in Common Stock, the method of calculating the amount of Common Stock to be delivered on the applicable payment date;

(vi) that interest on such Notes ceased to accrue as of the Conversion Termination Date in accordance with the Indenture; and

(vii) the right to convert such Notes expired on the Conversion Termination Date in accordance with the Indenture.

On or prior to the date fixed for redemption, the Issuer will deposit with a bank or trust company having an office or agency in the Borough of Manhattan, The City of New York an amount in cash sufficient to redeem on the date fixed for redemption all the Notes so called for redemption at the appropriate Redemption Price, together with the Cash Conversion Amount, if any.

If fewer than all of the outstanding Notes are to be redeemed, Notes to be redeemed will be selected by the Issuer from outstanding Notes not previously called for redemption by lot or pro rata (as near as may be) or by any other equitable method determined by the Issuer in its sole discretion. If fewer than all Notes represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed Notes without cost to the Holder thereof.

If notice of redemption has been given as described above, on and after the date fixed for redemption (unless the Issuer shall default in the payment of the Redemption Price, together with the Cash Conversion Amount), such Notes shall be deemed no longer outstanding and the Holders thereof shall have no right in respect of such Notes except the right to receive the Redemption Price thereof and the Cash Conversion Amount, if any.

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Mandatory Redemption

No sinking fund, mandatory redemption or other similar provision applies to the Notes.

Conversion

General

Subject to and upon compliance with the provisions of the Indenture, each Holder has the right at any time to convert the principal amount of its Notes, or any portion of such principal amount which is $1,000 or an integral multiple thereof, into shares of Common Stock; *provided*, that a Holder s right to convert Notes shall terminate upon the occurrence of a Conversion Event as described under Conversion Event Termination of Conversion Rights. The initial Conversion Rate is 95.23809524 shares of Common Stock per $1,000 principal amount of Notes.

Notwithstanding the foregoing, if a Holder has submitted Notes for purchase under Purchase at the Option of Holders Upon a Fundamental Change of Control, the Holder may convert such Notes only if the Holder first withdraws its Fundamental Change of Control Purchase Notice.

Conversion Procedures

In order to exercise the conversion right with respect to any interest in Global Notes, the Holder must complete the appropriate instruction form for conversion pursuant to the Depositary s book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Issuer or the Trustee or Conversion Agent and pay any transfer taxes if required by the Indenture. In order to exercise the conversion right with respect to any Physical Notes, the Holder must:

(i) complete and manually sign the conversion notice provided on the back of the Note (the **Conversion Notice**) or facsimile of the Conversion Notice;

(ii) deliver such notice, which is irrevocable, and the Note to a Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents; and

(iv) if required, pay any transfer or similar tax.

The date on which the Holder satisfies all of the applicable requirements set forth above is the **Conversion Date.**

Settlement Upon Conversion

Upon any conversion, the Issuer will, subject to the provisions under Conversion, deliver to converting Holders, in respect of each $1,000 principal amount of Notes being converted, a number of shares of Common Stock equal to the then Conversion Rate.

Upon conversion, on the Conversion Payment Date, Holders will receive separate cash payment for accrued and unpaid interest to, but excluding, the applicable Conversion Date (the **Accrued Interest**), unless such conversion occurs between a Record Date and the Interest Payment Date to which it relates. If Notes are converted after the Close of Business on a Record Date for the payment of interest but prior to the Open of Business on the related Interest Payment Date, Holders of such Notes at the Close of Business on such Record Date will receive in cash the interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion.

The Issuer may elect to pay the Accrued Interest to any Holder by delivery of shares of its Common Stock if and only if the following conditions have been satisfied:

(i) the shares of Common Stock deliverable in payment of the Accrued Interest have a fair market value as of the Conversion Date of not less than the Accrued Interest;

For purposes of this clause, the fair market value of shares of Common Stock will be determined by the Issuer and will be equal to 95% of the average of the 10-day VWAP of the Common Stock for the 10 consecutive Trading Days immediately preceding the Conversion Date. The Issuer will provide such Holder written notice prior to the Conversion Payment Date that it will pay all or a portion of the Accrued Interest in shares of Common Stock.

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(ii) if the Issuer s Common Stock is listed on a United States national securities exchange, payment of the Accrued Interest may not be made in Common Stock unless such stock is, or shall have been, approved for listing on the United States national securities exchange on which the Issuer s Common Stock may then be listed prior to the Conversion Payment Date;

(iii) all shares of Common Stock which may be issued will be issued out of the Issuer s authorized but unissued Common Stock and, will upon issue, be duly and validly issued and fully paid and non-assessable free of any preemptive rights; and

(iv) payment of the Accrued Interest may not be made in Common Stock to any Person to the extent such payment would cause such Person to become a beneficial owner (as determined pursuant to Section 13 of the Exchange Act) of securities of the Issuer in excess of the Conversion Cap as provided in Conversion Cap; *provided*, that the foregoing shall not prevent the Issuer from making a payment in Common Stock to any other Person.

If all the conditions set forth above are not satisfied, the Accrued Interest will be paid by the Issuer only in cash.

If any fractional share would be issuable upon the conversion of any Notes, the Issuer will pay the current market value of the fractional shares in cash. The current market value of a fractional share will be determined (calculated to the nearest 1/1000th of a share) by multiplying the Last Reported Sale Price of the Common Stock on the relevant Conversion Date by such fractional share and rounding the product to the nearest whole cent. The Issuer will not issue fractional shares upon payment of Accrued Interest. If any fractional share would be issuable upon such payment, the Issuer shall make payment in an amount of such fractional share in cash.

Adjustment of Conversion Rate

The Conversion Rate will be adjusted from time to time by the Issuer for certain events, including:

(1) if the Issuer pays a dividend in shares of Common Stock or makes a distribution in shares of Common Stock, in each case, to all or substantially all holders of Common Stock;

(2) if the outstanding shares of Common Stock are subdivided into a greater number of shares of Common Stock or combined into a smaller number of shares of Common Stock (in each case, other than in connection with a Fundamental Change of Control);

(3) if the Issuer issues rights (other than rights issued pursuant to a stockholder rights plan, and then in accordance with the last paragraph of this Adjustment of Conversion Rate subsection), warrants or options to all or substantially all holders of Common Stock entitling them to purchase, for a period expiring within 60 calendar days of the date of issuance, Common Stock at an aggregate price per share less than the average of the Last Reported Sale Prices of Common Stock during the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the time of announcement of the distribution;

(4) if the Issuer, by dividend or otherwise, distributes to all or substantially all holders of its outstanding Common Stock, evidences of the Issuer s indebtedness or assets, including securities but excluding: (i) any dividends or distributions referred to in (1) above; (ii) shares delivered in connection with subdivisions of Common Stock referred to in (2) above; (iii) any rights, warrants or options referred to in (3) above; and, or (iv) any dividends or distributions referred to in (5) below (any of the foregoing hereinafter referred to as the **Distributed Assets**);

(5) if the Issuer pays a dividend or otherwise distributes to all or substantially all holders of its Common Stock a dividend or other distribution of exclusively cash excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Issuer; and

(6) purchases of Common Stock pursuant to a tender offer or exchange offer made by the Issuer or any Subsidiary of the Issuer for all or any portion of Common Stock, to the extent that the Fair Market Value of cash and any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price of Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (the **Expiration Date**).

In cases where the Fair Market Value of Distributed Assets and cash, other than the payment of a dividend or other distribution on Common Stock that consists of shares of Capital Stock of any class or series of, or similar equity interests in, a Subsidiary or other business unit of the Issuer (i.e., a spin-off) that are, or when issued, will be, traded or listed on The Nasdaq

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Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or any other United States national securities exchange or market, applicable to one share of Common Stock, distributed to holders of Common Stock:

(i) equals or exceeds the average of Last Reported Sale Prices of Common Stock during the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution, or

(ii) the average of the Last Reported Sale Prices of Common Stock during the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution exceeds the Fair Market Value of such Distributed Assets or cash so distributed by less than $1.00,

rather than being entitled to an adjustment in the Conversion Rate, the Holder of a Note will be entitled to receive upon conversion, in addition to Common Stock, the Distributed Assets or cash, as applicable, that such Holder would have been entitled to receive if such Holder had been a record holder of Common Stock (on an as converted basis at the then applicable Conversion Rate) on the Record Date for determining the stockholders entitled to receive the distribution.

The Issuer is permitted to increase the Conversion Rate by any amount for a period of at least 20 Business Days if the increase is irrevocable during the period and the Issuer s Board of Directors determines that such increase would be in the best interest of the Issuer. The Issuer may also (but is not required to) increase the Conversion Rate as the Issuer s Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of Common Stock (or rights to acquire Common Stock) or from any event treated as such for income tax purposes.

Without limiting the foregoing, the Conversion Rate will not be adjusted for (A) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Issuer s securities or the investment of additional optional amounts in shares of Common Stock under any plan; (B) the issuance of any shares of Common Stock or options or rights to purchase such shares pursuant to any of the Issuer s present or future employee, director, trustee or consultant benefit plans, employee agreements or arrangements or programs including the Management Incentive Plan; (C) a change in the par value of Common Stock or (D) the issuance of shares of Common Stock or any securities convertible into or exchangeable or exercisable for shares of the Issuer s Common Stock or rights to purchase shares of Common Stock or such convertible, exchangeable or exercisable securities or the payment of cash upon repurchase or redemption thereof, except as otherwise provided.

All calculations will be made by the Issuer and not by the Trustee or Conversion Agent, and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000th) of a share of Common Stock, as the case may be.

Whenever the Conversion Rate is adjusted as described above, the Issuer will publicly announce through a reputable national newswire in the United States the relevant information, file such press release with the SEC on Form 8-K and make this information available on the Issuer s website.

Notwithstanding any of the foregoing, the applicable Conversion Rate will not be adjusted if the Holders of the Notes are permitted to participate (as a result of holding the Notes and contemporaneously with holders of Common Stock) in any of the transactions that would otherwise give rise to adjustment as if such Holders of the Notes held a number of shares of Common Stock equal to the applicable Conversion Rate one Business Day prior to the effective date of the applicable transaction, multiplied by the principal amount (expressed in thousands) of Notes held by such Holder, without having to convert their Notes.

If the Issuer has in effect a rights plan while any Notes remain outstanding, Holders of Notes will receive, upon a conversion of such Notes, in addition to such shares of Common Stock, rights under the Issuer s stockholder rights plan unless, prior to such conversion, the rights have expired, terminated or been redeemed or unless the rights have separated from Common Stock. If the rights provided for in any rights plan that the Issuer s Board of Directors may adopt have separated from the Common Stock in accordance with the provisions of the rights plan so that Holders of Notes would not be entitled to receive any rights in respect of Common Stock that the Issuer delivers upon conversion of Notes, the Issuer will adjust the conversion rate at the time of separation as if the Issuer had distributed to all holders of the Issuer s Common Stock, shares of Capital Stock, evidences of indebtedness or other assets or property in accordance with this section, subject to readjustment upon the subsequent expiration, termination or redemption of such rights.

Effect of Reclassification, Consolidation, Merger or Sale

If the case of:

(a) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change in par value or as a result of a subdivision or combination), or

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(b) any consolidation, merger or combination of the Issuer with or into another Person, or any sale, lease, transfer, conveyance or other disposition of all or substantially all of the Issuer s assets and those of the Issuer s Subsidiaries taken as a whole to any other Person or Persons (other than to one or more of its subsidiaries),
in each case, as a result of which holders of all or substantially all of the Common Stock receive stock, other securities or other property or assets (including cash or any combination thereof) with respect to or in exchange for such Common Stock, the Issuer or the successor or purchasing corporation, as the case may be, will execute with the Trustee a supplemental indenture providing that from and after the effective date of such transaction each such Note shall, without the consent of any Holders of Notes, become convertible into, in lieu of the Common Stock otherwise deliverable, the same type (in the same proportion) of the consideration that the holders of Common Stock received in such reclassification, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition (such consideration, the **Reference Property**).

In all cases, the conditions relating to conversion of Notes will continue to apply following such transaction. If the transaction also constitutes a Fundamental Change of Control, a Holder converting Notes in connection with the Fundamental Change of Control will be entitled to receive Additional Shares and the Make Whole Payment in accordance with Adjustment Upon Fundamental Change of Control in the Fundamental Change of Control. If such transaction causes Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property shall be deemed to be the kind and amount of consideration elected to be received by a majority of shares of Common Stock voted for such an election (if electing between two types of consideration) or a plurality of shares of Common Stock voted for such an election (if electing between more than two types of consideration), as the case may be. The Issuer will not become a party to any such transaction unless its terms are consistent with the foregoing.

If, in the case of any such reclassification, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition, the stock or other securities and assets received thereupon by a holder of Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, consolidation, merger, sale, lease, transfer, conveyance or other disposition, then the supplemental indenture will also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Issuer s Board of Directors will reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the conversion rights.

The Issuer will cause notice of the execution of a supplemental indenture to be mailed or delivered to each Holder, within 20 calendar days after execution thereof. Simultaneously with providing such notice, the Issuer will announce through a reputable national newswire in the United States the relevant information and make this information available on the Issuer s website.

Adjustment Upon Fundamental Change of Control

If a Holder converts its Notes in connection with a Fundamental Change of Control, the Issuer will (i) increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the **Additional Shares**) as described below and (ii) pay to such Holder the Make Whole Payment as described below. A conversion of Notes will be deemed for these purposes to be in connection with such Fundamental Change of Control if the notice of conversion of the Notes is received by the Conversion Agent during the period from the Effective Date of the Fundamental Change of Control to Close of Business on the Business Day immediately preceding the related Fundamental Change of Control Purchase Date.

The number of Additional Shares, if any, by which the Conversion Rate will be increased will be determined by reference to the table below, based on the date on which the Fundamental Change of Control becomes effective (the **Effective Date**) and the price (the **Share Price**) paid (or deemed paid) per share of Common Stock in the Fundamental Change of Control. If the Holders of the Common Stock receive only cash in a Fundamental Change of Control, the Share Price will be the cash amount paid per share of Common Stock. Otherwise, the Share Price shall be the 10-day VWAP preceding the Effective Date of such Fundamental Change of Control.

The Share Prices set forth in the column headings of the table below will be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Share Prices will equal the Share Prices

applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the share price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table will be adjusted in the same manner as the Conversion Rate as set forth in Adjustment of Conversion Rate.

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		Stock Price							
		$6.21	**$7.00**	**$10.50**	**$14.00**	**$17.50**	**$21.00**	**$24.50**	**$28.00**
Validation Date	**8/31/2010**	65.793	53.181	23.631	11.808	6.225	3.320	1.715	0.806
	8/31/2011	65.793	52.584	21.700	9.582	4.328	1.957	0.839	0.296
	8/31/2012	65.793	51.687	20.025	6.866	0.356	0.000	0.000	0.000
	8/31/2013	65.793	49.778	17.630	5.804	0.274	0.000	0.000	0.000
	8/31/2014	65.793	47.619	12.315	3.332	0.147	0.000	0.000	0.000
	8/31/2015	65.793	47.619	0.000	0.000	0.000	0.000	0.000	0.000

The exact Share Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the Share Price is between two Share Price amounts in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Price amounts and the earlier and later Effective Dates, as applicable, based on a 365-day year.

(ii) if the Share Price is greater than $28.00 per share (subject to adjustment as set forth above), no Additional Shares will be added to the Conversion Rate.

(iii) if the Share Price is less than $6.21 per share (subject to adjustment as set forth above), no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the total number of Additional Shares added to the Conversion Rate exceed 65.793 per $1,000 principal amount of Notes, subject to adjustments in the same manner as the Conversion Rate as set forth Adjustment of Conversion Rate.

In connection with a Fundamental Change of Control, and if a Holder converts its Notes in connection with such Fundamental Change of Control, in addition to the payment of the Additional Shares, the Issuer will be required to make an additional payment to such Holder in cash (the **Make Whole Payment**), which Make Whole Payment will equal the total amount of interest that would have accrued and become payable on such Notes from, but excluding, the Effective Date through and including August 31, 2013 (but including any accrued and unpaid interest on the Notes from the Issue Date through and including the Effective Date). The Make Whole Payment will be made on the applicable Conversion Payment Date. The Issuer may elect to pay the Make Whole Payment in Common Stock if certain conditions specified in the Indenture have been met.

A Purchaser Party will not be entitled to receive Additional Shares or the Make Whole Payment upon a Fundamental Change of Control, notwithstanding any conversion of such Purchaser Party s Notes, if such Fundamental Change of Control (i) is a merger, consolidation or sale with or into such Purchaser Party, or any member of any group of which such Purchaser Party is a member or any of their respective Affiliates; (ii) is a transaction specified in clause (ii) of the definition of Fundamental Change of Control if such Purchaser Party or any of its Affiliates is a person or a member of a group for purposes of such definition or (iii) if the nominees of any such Purchaser Party, or any member of any group of which such Purchaser Party is a member or any of their respective Affiliates constitutes one or more of new members of the Board of Directors effecting such Fundamental Change of Control. For purposes of this paragraph, group has the meaning it has in Sections 13(d) and 14(d) of the Exchange Act and person is used with the same meaning as that used within Rule 13d-3 under the Exchange Act, in each case whether or not applicable.

The Issuer will notify Holders, the Trustee and the Conversion Agent of the anticipated Effective Date of any Fundamental Change of Control on or prior to the later of (i) 10 calendar days prior to such Effective Date and (ii) 10 calendar days following the date on which the Issuer becomes aware (or should have become aware) of such anticipated Effective Date. The Issuer will publicly announce such information through a reputable national newswire in the United States, file such press release with the SEC on Form 8-K and shall make such information available on the Issuer s website.

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Conversion Event; Termination of Conversion Rights

If the Last Reported Sale Price of the Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days equals or exceeds 150% of the Conversion Price (a **Conversion Event**), the Issuer may deliver a notice (the **Conversion Event Notice**) with respect to such Conversion Event at any time within 20 Business Days of such Conversion Event. Simultaneously with providing the Conversion Event Notice, the Issuer will publicly announce the relevant information through a reputable national newswire in the United States, file such press release with the SEC on Form 8-K and make such information available on the Issuer s website.

Except as set forth by a Holder in an Election Notice (as defined below), a Holder s right to convert Notes shall automatically terminate, with no further action of the Issuer or any Holder, immediately prior to the Open of Business on the date that is 46 days following the date of the Conversion Event Notice (the **Conversion Termination Date**). A Holder may convert its Notes at any time in connection with a Conversion Event during the 45-day period from the date of the Conversion Event Notice to the Close of Business on the Business Day immediately preceding the Conversion Termination Date. A conversion of Notes will be deemed for these purposes to be in connection with a Conversion Event if notice of conversion is received by the Conversion Agent during the period from the date of the Conversion Event Notice to the Close of Business on the Business Day immediately preceding the Conversion Termination Date.

Any Notes not converted prior to the Conversion Termination Date as a result of the Conversion Cap will be, at such Holder s election, upon written notice to the Issuer delivered by such Holder (an **Election Notice**), converted into shares of Common Stock of the Issuer on a date (or dates) prior to the date that is 180 days following the Conversion Termination Date (such date or dates as specified in the Election Notice, the **Cap Conversion Dates**).

The Conversion Event Notice delivered by the Issuer will state the amount of the Cash Conversion Amount and whether the payment of the Cash Conversion Amount shall be made in cash, shares of Common Stock or a combination of cash and shares of Common Stock and the method of calculating the Cash Conversion Amount payment.

In addition to any other information provided by the Issuer, a Conversion Event Notice will:

(i) state the events constituting the Conversion Event and the Conversion Rate then applicable to the Notes;

(ii) state that the right to convert Notes will terminate immediately prior to the Open of Business on the date that is 46 days following the date of Conversion Event Notice;

(iii) state that holders may convert Notes up to the Conversion Cap at any time prior to the Close of Business on the Business Day immediately preceding the Conversion Termination Date;

(iv) state that any Holders who cannot convert the full amount of their Notes prior to the Conversion Termination Date due to the Conversion Cap may send an Election Notice to the Issuer and may elect to convert such Notes on any date or dates prior to the date that is 180 days following the Conversion Termination Date.

(v) state that except for Notes specified for conversion pursuant to an Election Notice, any Notes not otherwise converted prior to the Conversion Termination Date may be redeemed at the option of the Issuer at any time in accordance with Redemption and will also state the Redemption Price therefor;

(vi) state that interest will cease to accrue on all Notes as of the Conversion Termination Date;

(vii) state that certain covenants (to be specified in such Conversion Event Notice) contained in the Indenture will cease to have any further force or effect as of the Conversion Termination Date and will state such other provisions of the Indenture that shall no longer apply; and

(viii) state the amount of the Cash Conversion Amount, if any, payable on all Notes as a result of the Conversion Event and the dates which such Cash Conversion Amount may be paid.

If a Conversion Event occurs on or prior to August 31, 2012, in addition to shares of Common Stock issuable upon conversion of the Notes prior to the Conversion Termination Date, or amounts received upon redemption of the Notes or upon maturity thereof, the Issuer will be required to make an additional payment in cash (the **Cash Conversion Amount**) in respect of the Notes. The Cash Conversion Amount will be equal to the lesser of: (i) the aggregate amount of interest payable from (and including) the Conversion Termination Date to and including August 31, 2012 and (ii) an aggregate amount equal to 15 months of interest on the Notes (in each case including any accrued and unpaid interest on the Notes from the Issue Date to and including the Conversion Termination Date (or

applicable Conversion Date, if earlier).

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Notwithstanding the above, the Issuer may elect to pay the Cash Conversion Amount by delivery of shares of its Common Stock if and only if certain conditions specified in the Indenture are satisfied.

On and after the Conversion Termination Date, interest shall cease to accrue on the Notes. In addition, after the Conversion Termination Date, certain provisions of the Indenture will cease to have any further force and effect with respect to any Notes not converted in connection with a Conversion Event (whether prior to the Conversion Termination Date or pursuant to an Election Notice) (the **Remaining Notes**), including those described under: (i) Purchase at the Option of Holders Upon a Fundamental Change of Control; (ii) Conversion (other than certain provisions, including Conversion Cap); (iii) Certain Covenants (other than the Consolidated Secured Debt Ratio covenant); and (iv) Events of Default (other than clauses (i), (ii), (vi), (xi) and (xii) in the first paragraph thereof).

The Issuer will pay the Cash Conversion Amount as follows (each, a **Cash Conversion Payment Date**): (i) on the Conversion Termination Date for all Notes converted during the period from the date of the Conversion Event Notice to the Close of Business on the Business Day immediately preceding the Conversion Termination Date; (ii) on the date or dates specified for conversion in an Election Notice; and (iii) on the date of redemption or at maturity, as applicable for any Remaining Notes.

Conversion Cap

Notwithstanding anything to the contrary, (a) a Person or any Affiliate thereof holding the Notes will not be entitled to convert any Notes (and the Issuer will not so convert any Notes), (b) the Issuer will not be entitled to settle any cash payments owing to any Person of Notes in shares of its Common Stock and (iii) shares of any acquiror (or successor) will not be issued upon conversion pursuant to the adjustment mechanisms contained in Effect of Reclassification, Consolidation, Merger or Sale in connection with a transaction governed by Effect of Reclassification, Consolidation, Merger or Sale or upon a Fundamental Change of Control to the extent, and only to the extent, such conversion, share settlement or issuance would cause such Person, together with its Affiliates, to become a beneficial owner (as determined pursuant to Section 13 of the Exchange Act and Rules 13d-3 and 13d-5 thereunder) of more than 9.9% of the issued and outstanding shares of Common Stock (or such equivalent shares of an acquiror or successor) (the **Conversion Cap**). The Issuer will, within three Business Days of delivery by a Holder of a Conversion Notice, notify such Holder in writing of (i) the number of shares of Common Stock that would be issuable to such Holder if such conversion requested in such Conversion Notice were effected in full and (ii) the number of issued and outstanding shares of Common Stock of the Issuer as of the most recent date such information is available to the Issuer. Whereupon, within three Business Days of such notice, the Issuer will issue to such Holder the number of shares of Common Stock issuable upon conversion up to the Conversion Cap. In connection with this paragraph, such Holder must furnish to the Issuer any information reasonably requested by the Issuer in connection with the Conversion Cap amount calculations. Notwithstanding anything to the contrary, to the extent any such issuance would cause a Holder or an Affiliate thereof to be a beneficial owner of more than 9.9% of the issued and outstanding shares of Common Stock (or successor shares), such conversion, share settlement or issuance upon conversion as the case may be will be void and of no effect. The limitations may not be waived at any time by any Holder. Any acquiror (or successor) or the Issuer will expressly assume the obligations of the Issuer in this paragraph with respect to the Notes in connection with any transaction governed by Effect of Reclassification, Consolidation, Merger or Sale or otherwise in connection with a Fundamental Change of Control.

Purchase at the Option of Holders Upon a Fundamental Change of Control

If a Fundamental Change of Control occurs, each Holder has the right to require the Issuer to purchase all of such Holder s Notes, or any portion thereof in principal amount that is equal to $1,000 or an integral multiple thereof, on a date specified by the Issuer that is not less than 25 Business Days nor more than 30 Business Days after the Fundamental Change of Control, subject to extension to comply with applicable law (the **Fundamental Change of Control Purchase Date**), at a purchase price in cash equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon to, but excluding, the Fundamental Change of Control Purchase Date (the **Fundamental Change of Control Purchase Price**), subject to the satisfaction by the Holder of the requirements set forth below. If the Fundamental Change of Control Purchase Date occurs after a Record Date and on or prior to the Interest Payment Date to which it relates, the Issuer will pay accrued and unpaid interest to the Holder of record as of the corresponding Record Date and the Fundamental Change of Control Purchase Price payable to the Holder of such

Note will be 100% of the principal amount of such Note.

A **Fundamental Change of Control** will be deemed to occur at such time as:

(i) The Issuer consolidates with or merges with or into another Person (other than any Subsidiary of the Issuer and its outstanding Voting Stock is reclassified into, converted for or converted into the right to receive any other property or security, or the Issuer sells, conveys, transfers or leases all or substantially all of its properties and assets to any Person (other than its Subsidiary); *provided*, that the foregoing shall not constitute a Fundamental Change of Control if (x) Persons that beneficially own the Issuer s Voting Stock immediately prior to the transaction own, directly or indirectly, a majority of the Voting Stock of the surviving or transferee Person immediately after the transaction in substantially the same proportion as their ownership of the

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Issuer s Voting Stock immediately prior to the transaction or (y) such transaction is a consolidation, merger or sale, lease, conveyance or other disposition the purpose of which is to effect the Issuer s redomiciling;

(ii) Any person or group , other than the Issuer or any of its Subsidiaries or any employee benefit plan of the Issuer or such Subsidiary, is or becomes the beneficial owner, directly or indirectly, of more than 50% of the total voting power in the aggregate of all classes of the Issuer s capital stock then outstanding and entitled to vote generally in elections of directors; or

(iii) During any period of 12 consecutive months after the Issue Date, Persons who at the beginning of such 12 month period constituted the Issuer s Board of Directors, together with any new Persons whose election was approved by a vote of a majority of the Persons then still comprising its Board of Directors who were either members of the Board of Directors at the beginning of such period or whose election, designation or nomination for election was previously so approved, cease for any reason to constitute a majority of the Issuer s Board of Directors.

For purposes of this definition, (i) beneficial owner is used as defined in Rules 13d-3 and 13d-5 under the Exchange Act, (ii) group has the meaning it has in Sections 13(d) and 14(d) of the Exchange Act and (iii) person is used with the same meaning as that used within Rule 13d-3 under the Exchange Act, in each case whether or not applicable.

A Fundamental Change of Control shall be deemed not to have occurred in the case of a merger or consolidation described in clause (i) of the definition of Fundamental Change of Control if (x) at least 90% of the consideration paid for the Issuer s Common Stock (other than cash payments for fractional shares and cash payments pursuant to dissenter s appraisal rights) in the merger or consolidation consists of common stock of a United States or non-United States company traded on a United States national securities exchange (or which will be so traded or quoted when issued or exchanged in connection with such transaction) and (y) the market capitalization of the acquiror in such merger or consolidation is at least equal to or greater than the market capitalization of the Issuer on the Trading Day immediately preceding the day on which such merger or consolidation is publicly announced.

Within five (5) calendar days after the occurrence of a Fundamental Change of Control, the Issuer must deliver to all Holders of record of the Notes a notice (the **Fundamental Change of Control Issuer Notice**) with respect to such Fundamental Change of Control. Simultaneously with providing such Fundamental Change of Control Issuer Notice, the Issuer must publicly announce the relevant information through a reputable national newswire in the United States, file such press release with the SEC on Form 8-K and make such information available on the Issuer s website.

The Fundamental Change of Control Issuer Notice will:

(i) state the Fundamental Change of Control Purchase Price including the amount of interest accrued and unpaid per $1,000 principal amount of Notes to, but excluding, the Fundamental Change of Control Purchase Date and the Fundamental Change of Control Purchase Date to which the Fundamental Change of Control Issuer Notice relates;

(ii) state the event constituting the Fundamental Change of Control and the Effective Date of the Fundamental Change of Control;

(iii) state whether the Fundamental Change of Control Purchase Price will be paid in cash;

(iv) state that Holders must exercise their right to elect purchase prior to Close of Business on the Business Day immediately preceding the Fundamental Change of Control Purchase Date by sending a Fundamental Change of Control Purchase Notice to the Paying Agent;

(v) state the name and address of the Paying Agent;

(vi) state that Notes must be surrendered to the Paying Agent to collect the Fundamental Change of Control Purchase Price;

(vii) state that a Holder may withdraw its Fundamental Change of Control Purchase Notice in whole or in part at any time prior to Close of Business on the Business Day immediately preceding the Fundamental Change of Control Purchase Date by delivering a valid written notice of withdrawal as described below;

(viii) state that the Notes are then convertible, the Conversion Rate and any adjustments to the Conversion Rate resulting from the Fundamental Change of Control transaction and expected changes in cash, shares or other property deliverable upon conversion of the Notes as a result of the occurrence of the Fundamental Change of Control;

(ix) state that if Notes are converted in connection with a Fundamental Change of Control (rather than repurchased) a Holder shall be entitled to receive Additional Shares and a Make Whole Payment;

(x) state the number of Additional Shares and Make Whole Payment that would be payable as a result of such Fundamental Change of Control transaction, if any, if the Notes are converted in connection with such Fundamental Change of Control (rather than repurchased);

(xi) state that for Notes to be converted in connection with a Fundamental Change of Control, Notes must be converted at any time on or after the Effective Date of the Fundamental Change of Control but prior to the Close of Business on the Fundamental Change of Control Purchase Date;

(xii) state that Notes as to which a Fundamental Change of Control Purchase Notice has been given by a Holder may be converted and the Additional Shares and Make Whole Payment received only if a Fundamental Change of Control Purchase Notice is not given or is withdrawn in accordance with the terms of the Indenture; and

(xiii) state the CUSIP number of the Notes.

For Notes to be purchased at the option of the Holder, the Holder must deliver to the Paying Agent, at any time after the occurrence of the Fundamental Change of Control and prior to Close of Business, on the Business Day immediately preceding the Fundamental Change of Control Purchase Date, a duly completed notice (the **Fundamental Change of Control Purchase Notice**) in the form attached to the Indenture, which must specify:

(1) if the Notes are Physical Notes, the certificate numbers of the Holder s Notes to be delivered for purchase or if such Notes are not Physical Notes, the Holder s notice must comply with the appropriate procedures of the Depositary and its direct and indirect participants;

(2) the portion of the principal amount of the Holder s Notes to be purchased, which must be $1,000 or an integral multiple thereof; and

(3) that the Holder s Notes are to be purchased by the Issuer pursuant to the applicable provisions of the Notes and the Indenture.

(4) delivery or book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Issuer) at any time after delivery of the Fundamental Change of Control Purchase Notice (together with all necessary endorsements) at the applicable Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Issuer), such delivery being a condition to receipt by the Holder of the Fundamental Change of Control Purchase Price therefor; *provided,* that such Fundamental Change of Control Purchase Price will be paid only if the Notes so delivered to the Trustee (or other Paying Agent appointed by the Issuer) conform in all respects to the description thereof in the related Fundamental Change of Control Purchase Notice and no written notice of withdrawal is received by the Paying Agent at any time prior to the Close of Business on the Business Day immediately preceding the Fundamental Change of Control Purchase Date.

A Fundamental Change of Control Purchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent at any time prior to Close of Business time on the Business Day immediately preceding the Fundamental Change of Control Purchase Date, specifying:

(i) if the Notes are Physical Notes, the certificate numbers of the withdrawn Notes, or if such Notes are not Physical Notes, the notice must comply with appropriate procedures of the Depositary and its direct and indirect participants;

(ii) the principal amount of the Notes with respect to which notice of withdrawal is being submitted, which must be $1,000 or integral multiples thereof; and

(iii) the principal amount, if any, of such Notes which remains subject to the original Fundamental Change of Control Purchase Notice and which has been or will be delivered for purchase by the Issuer, which must be $1,000 or integral multiples thereof.

The Issuer will, to the extent required, (i) comply with the provisions of Rule 13e-4 and Rule 14e-1 (or any successor provision) and any other tender offer rules under the Exchange Act that may be applicable at the time of the purchase of the Notes, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act and (iii) otherwise comply with all federal and state securities laws so as to permit the rights and obligations under Purchase at the Option of Holders Upon a Fundamental Change of Control to be exercised in the time and in the manner specified above.

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Notwithstanding the foregoing, the Issuer will not be required to make an offer to purchase the Notes after the Maturity Date or after the Conversion Termination Date.

Notwithstanding the foregoing, no Notes may be purchased by the Issuer at the option of the Holders if an Event of Default has occurred and is continuing other than an Event of Default that is cured by the payment of the Fundamental Change of Control Purchase Price on the Fundamental Change of Control Purchase Date.

Any purchase by the Issuer will be consummated by the delivery to the Trustee of the consideration to be received by the Holder promptly following the later of the Fundamental Change of Control Purchase Date or the time of the book-entry transfer or delivery of the Notes.

The definition of Fundamental Change of Control includes a phrase relating to the conveyance, transfer, sale or lease of all or substantially all of our assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, the ability of a Holder to require us to purchase its Notes as a result of the conveyance, transfer, sale or lease of less than all of our assets may be uncertain.

If a Fundamental Change of Control were to occur, we may not have enough funds to pay the Fundamental Change of Control Purchase Price. Our ability to repurchase the Notes for cash may be limited by restrictions on our ability to obtain funds for such repurchase through dividends from our subsidiaries, the terms of our then-existing borrowing arrangements or otherwise. See Risk Factors Risks Related to the Notes and the Common Stock We may not be able to repurchase Notes or pay in cash amounts contemplated under the Indenture upon the occurrence of certain events. If we fail to purchase the Notes when required following a Fundamental Change of Control, we will be in default under the Indenture. In addition, we have, and may in the future incur, other indebtedness with similar change in control provisions permitting our holders to accelerate or to require us to purchase our indebtedness upon the occurrence of similar events or on some specific dates.

Certain Covenants

The Indenture contains, among others, the following covenants:

Limitations on Additional Indebtedness

The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur any Indebtedness.

Notwithstanding the above, the Issuer and the Restricted Subsidiary shall be permitted to incur Permitted Indebtedness. Each of the following shall be permitted (the **Permitted Indebtedness**):

(i) Indebtedness of the Issuer or any Guarantor under the ABL Facility in an aggregate principal amount at any time outstanding not to exceed $80.0 million (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Issuer or such Guarantor) *less*, to the extent a permanent repayment and/or commitment reduction is required thereunder as a result of such application, the aggregate amount of Net Available Proceeds applied to repayments under the Credit Agreement in accordance with Limitations on Asset Sales;

(ii) The Notes issued on the Issue Date and the Note Guarantees in respect thereof;

(iii) Indebtedness of the Issuer and the Restricted Subsidiaries to the extent outstanding on the Issue Date (other than Indebtedness referred to in clauses (i) and (ii) above, and immediately following the Issue Date after giving effect to the intended use of proceeds of the Notes);

(iv) Indebtedness under Hedging Obligations (including Swap Obligations) of the Issuer or any Restricted Subsidiary in the ordinary course and not for the purpose of speculation;

(v) Indebtedness of the Issuer owed to a Restricted Subsidiary and Indebtedness of any Restricted Subsidiary owed to the Issuer or any other Restricted Subsidiary; *provided*, *however*, (a) that upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person other than the Issuer or a Restricted Subsidiary, the Issuer or such Restricted Subsidiary, as applicable, shall be deemed to have incurred Indebtedness not permitted by this clause (v); (b) any such Indebtedness made by a Note Party shall be evidenced by a promissory note pledged to the Noteholder Collateral

Agent for the ratable benefit of the Noteholder Secured Parties pursuant to the Collateral Agreement; and (c) any such Indebtedness made by Note Parties to Subsidiaries that are not Guarantors is either a Permitted Investment or permitted by Limitations on Restricted Payments;

(vi) Indebtedness in respect of bid, performance, surety bonds, statutory, appeal, export or import, indemnities, customs or revenue bonds or similar instruments in the ordinary course of business and workers compensation claims, self-insurance obligations and bankers acceptances issued for the account of the Issuer or any Restricted Subsidiary in the ordinary course of business, including guarantees or obligations of the Issuer or any Restricted Subsidiary with respect to letters of credit supporting such bid, performance, surety bonds and workers compensation claims, self-insurance obligations and bankers acceptances;

(vii) Purchase Money Indebtedness incurred by the Issuer or any Restricted Subsidiary, and Refinancing Indebtedness thereof, in an aggregate amount not to exceed at any time outstanding the greater of $20.0 million and 12.5% of Consolidated Net Tangible Assets at the time of the incurrence;

(viii) Indebtedness arising from (a) the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided*, *however*, that such Indebtedness is extinguished within five (5) Business Days of incurrence and (b) without duplication of clause (a), Banking Services Obligations;

(ix) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(x) Refinancing Indebtedness with respect to Indebtedness incurred pursuant to clause (ii), (iii), (xi) or (xii) of this covenant or this clause (x);

(xi) (A) Acquired Indebtedness of the Issuer or any Restricted Subsidiary, and (B) Indebtedness incurred by the Issuer or any Restricted Subsidiary in contemplation of, or in connection with, or to provide all or any part of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Subsidiary of or was otherwise acquired by the Issuer or a Restricted Subsidiary or was merged with or into or consolidated with the Issuer or a Restricted Subsidiary of the Issuer; *provided* that such Indebtedness shall not exceed the greater of $15.0 million or 10% of the Consolidated Net Tangible Assets at the time of incurrence; and

(xii) Acquired Indebtedness of the Issuer or any Restricted Subsidiary assumed or acquired in connection with a transaction governed by, and effected in accordance with, the first paragraph of Limitations on Mergers, Consolidations, Etc. (except to the extent such Acquired Indebtedness was incurred in connection with or in contemplation of such acquisition);

(xiii) Indemnification, adjustment of purchase price, earn-out or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business or assets of the Issuer or any Restricted Subsidiary or Equity Interests of a Restricted Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Capital Stock for the purpose of financing any such acquisition; *provided,* that the maximum aggregate liability in respect of all such obligations outstanding under this clause (xiii) shall at no time exceed (a) in the case of an acquisition, $5.0 million (*provided* that the amount of such liability shall be deemed to be the amount thereof, if any, reflected on the balance sheet of the Issuer or any Restricted Subsidiary (*e.g.*, the amount of such liability shall be deemed to be zero if no amount is reflected on such balance sheet)) and (b) in the case of a disposition, the gross proceeds actually received by the Issuer and the Restricted Subsidiaries in connection with such disposition;

(xiv) Any other Indebtedness of the Issuer or any Restricted Subsidiary if, after giving effect thereto, the Total Leverage Ratio does not exceed 5.00:1.00;

(xv) Indebtedness of the Issuer or any Restricted Subsidiary incurred in the ordinary course of business under guarantees of Indebtedness of suppliers, licensees, franchisees or customers in an aggregate amount, together with the aggregate amount of Investments under clause (12) of the definition of Permitted Investments, not to exceed $5.0 million at any time outstanding;

(xvi) The issuance by any of the Issuer s Restricted Subsidiaries to the Issuer or to any of its Restricted Subsidiaries of shares of preferred stock; *provided*, *however*, that:

(1) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer; and

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(2) any sale or other transfer of any such preferred stock to a Person that is not either the Issuer or a Restricted Subsidiary of the Issuer, will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this clause (xvi);

(xvii) (A) The guarantee by the Issuer or any Restricted Subsidiary of the Issuer of Indebtedness of the Issuer or a Restricted Subsidiary of the Issuer, in each case, to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this covenant and (B) guarantees by the Issuer or any Restricted Subsidiary of the Issuer provided to the Excluded Joint Venture to the extent permitted by clause (24) of the definition of Permitted Investments ;

(xviii) Contribution Indebtedness;

(xix) The incurrence by the Issuer or any Restricted Subsidiary of Indebtedness consisting of obligations to pay insurance premiums in an amount not to exceed the annual premiums in respect of such insurance premiums at any one time outstanding;

(xx) Indebtedness related to unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law;

(xxi) Indebtedness supported by one or more letters of credit issued under the ABL Facility in accordance with clause (i); *provided* that the amount of Indebtedness permitted to be incurred under this clause (xxi) supported by any such letter(s) of credit shall not exceed the amount of such letter(s) of credit;

(xxii) Indebtedness issued by the Issuer or any Guarantor to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Company or any of its direct or indirect parent companies permitted by clause (iv) of the second paragraph of Limitations on Restricted Payments not in excess of $2.0 million at any time outstanding;

(xxiii) The incurrence by the Issuer or any Restricted Subsidiary of additional Indebtedness or the issuance by the Issuer of Disqualified Stock or the issuance by any Restricted Subsidiary of preferred stock in an aggregate principal amount (or accreted value, as applicable) or liquidation value at any time outstanding, including all Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness or liquidation value incurred pursuant to this clause (xxii), not to exceed $5.0 million; and

(xxiv) Indebtedness of the Issuer or any Restricted Subsidiaries in an amount not to exceed $1.5 million and incurred in connection with the sale of the Excluded Joint Venture; *provided* that any such Indebtedness shall be unsecured.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (i) through (xxiv) above, the Issuer shall classify and may reclassify, in its sole discretion, such item of Indebtedness and may divide, classify and reclassify such Indebtedness in more than one of the types of Indebtedness described, except that Indebtedness incurred under the Credit Agreement on the Issue Date by the Issuer or any Guarantor shall be deemed to have been incurred under clause (i) above. In addition, for purposes of determining any particular amount of Indebtedness under this covenant, guarantees, Liens or letter of credit obligations supporting Indebtedness otherwise included in the determination of such particular amount shall not be included so long as incurred by a Person that could have incurred such Indebtedness.

Limitations on Restricted Payments

The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, make any Restricted Payment if at the time of such Restricted Payment:

(i) A Default shall have occurred and be continuing or shall occur as a consequence thereof; or

(ii) The amount of such Restricted Payment, when added to the aggregate amount of all other Restricted Payments made after the Issue Date (other than Restricted Payments made pursuant to clause (ii), (iii), (iv), (v), (vi), (viii), (ix) or (x) of the next paragraph), exceeds the sum (the **Restricted Payments Basket**) of (without duplication):

(1) 50% of Consolidated Net Income for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the Issue Date to the end of the Issuer s most recently ended fiscal quarter for which consolidated financial statements are available (or, if such Consolidated Net Income shall be a deficit, minus 100% of such aggregate deficit), *plus*

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(2) Subject to clause (ii) of the next paragraph, 100% of the aggregate net cash proceeds received by the Issuer and 100% of the Fair Market Value at the time of receipt of assets other than cash, if any, received by the Issuer, either (x) as contributions to the common equity of the Issuer after the Issue Date or (y) from the issuance and sale of Qualified Equity Interests after the Issue Date, other than (a) any such proceeds or assets received from a Subsidiary of the Issuer; (b) Excluded Contributions; or (c) Designated Preferred Stock, *plus*

(3) The aggregate amount by which Indebtedness (other than any Subordinated Indebtedness) incurred by the Issuer or any Restricted Subsidiary subsequent to the Issue Date is reduced on the Issuer s balance sheet upon the conversion or exchange (other than by a Subsidiary of the Issuer) into Qualified Equity Interests (less the amount of any cash, or the fair value of assets, distributed by the Issuer or any Restricted Subsidiary upon such conversion or exchange (other than payments of interest with respect thereto), *plus*

(4) In the case of the disposition or repayment of or return on any Investment that was treated as a Restricted Payment made after the Issue Date, an amount (to the extent not included in the computation of Consolidated Net Income) equal to the lesser of (i) 100% of the aggregate amount received by the Issuer or any Restricted Subsidiary in cash or other property (valued at the Fair Market Value thereof) as the return of capital with respect to such Investment and (ii) the amount of such Investment that was treated as a Restricted Payment, *plus*

(5) Upon a Redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the lesser of (i) the Fair Market Value of the Issuer s proportionate interest in such Subsidiary immediately following such Redesignation, and (ii) the aggregate amount of the Issuer s Investments in such Subsidiary to the extent such Investments reduced the Restricted Payments Basket and were not previously repaid or otherwise reduced.

The foregoing will not prohibit:

(i) The payment by the Issuer or any Restricted Subsidiary of any dividend or the consummation of any redemption within 60 days after the date of declaration of the dividend or giving or any redemption notice, if on the date of declaration or notice, the payment or redemption would have complied with the provisions of the Indenture;

(ii) The making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent issuance and sale (other than to a Subsidiary of the Issuer) of, Qualified Equity Interests of the Issuer or from the substantially concurrent contribution of common equity capital to the Issuer; *provided*, that net cash proceeds from the issuance and sale of Qualified Equity Interests or from contributions to equity capital of the Issuer under this clause (ii) shall not be included for purpose of calculating amounts under clause (ii)(2) of the preceding paragraph;

(iii) The redemption of Subordinated Indebtedness of the Issuer or any Restricted Subsidiary (a) in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Equity Interests, (b) in exchange for, or out of the proceeds of the substantially concurrent incurrence of, Refinancing Indebtedness permitted to be incurred under Limitations on Additional Indebtedness and the other terms of the Indenture;

(iv) Payments by the Issuer to redeem Equity Interests of the Issuer held by officers, directors or employees or former officers, directors or employees (or their transferees, estates or beneficiaries under their estates), upon their death, disability, retirement, severance or termination of employment or service; *provided,* that the aggregate cash consideration paid for all such redemptions shall not exceed the sum of (A) $2.0 million during any calendar year (with unused amounts being available to be used in the following calendar year, but not in any succeeding calendar year) plus (B) the amount of any net cash proceeds received by or contributed to the Issuer from the issuance and sale after the Issue Date of Qualified Equity Interests of the Issuer to its officers, directors or employees that have not been applied to the payment of Restricted Payments pursuant to this clause (iv), plus (C) the net cash proceeds of any key-man life insurance policies that have not been applied to the payment of Restricted Payments pursuant to this clause (iv);

(v) Payments of cash, dividends, distributions, advances or other Restricted Payments by the Issuer or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares or upon the purchase, redemption or acquisition of fractional shares, including in connection with (i) the exercise of options or warrants, (ii) the conversion or exchange of Equity Interests, (iii) stock dividends, splits or combinations or business combinations, or (iv) the conversion of the Notes or any payment made with respect thereto;

(vi) Repurchases of Equity Interests (i) deemed to occur upon the exercise of stock options or other similar stock-based awards under equity plans of the Issuer or any of the Issuer s Restricted Subsidiaries, warrants or other Equity Interests to the extent such Equity Interests represent a portion of the exercise price of those stock options, other similar stock-based awards

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under equity plans of the Issuer or any Restricted Subsidiary, warrants or other Equity Interests or (ii) in connection with a gross up for tax withholding related to such Equity Interests;

(vii) Additional Restricted Payments of $5.0 million;

(viii) Restricted Payments that are made with Excluded Contributions;

(ix) The redemption of Indebtedness that is contractually subordinated to the Notes pursuant to provisions similar to those described in Purchase at the Option of Holders Upon a Fundamental Change of Control or Limitations on Asset Sales; ; *provided* that, prior to such redemption, the Issuer (or a third party to the extent permitted by the Indenture) has made a Change of Control Offer or Asset Sale Offer, as the case may be, with respect to the Notes as a result of such Fundamental Change of Control or Asset Sale, as the case may be, and has repurchased all Notes validly tendered and not withdrawn in connection with such Fundamental Change of Control Offer or Asset Sale Offer, as the case may be;

(x) The distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Issuer or a Restricted Subsidiary of the Issuer by, Unrestricted Subsidiaries;

(xi) Any Restricted Payment made in connection with the Transactions;

(xii) Payments and distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, merger or transfer of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole that complies with the terms of the Indenture, including Limitations on Mergers, Consolidations, Etc. ; or

(xiii) Repurchases of the Notes;

provided, that (a) in the case of any Restricted Payment pursuant to clause (iii)(c) above, no Default shall have occurred and be continuing or occur as a consequence thereof and (b) no issuance and sale of Qualified Equity Interests pursuant to clause (ii), (iii) or (iv)(B) above shall increase the Restricted Payments Basket.

For purposes of determining compliance with this covenant, in the event that a Restricted Payment meets the criteria of more than one of the categories of Restricted Payments described in clauses (i) through (xiii) of the second paragraph of this covenant, or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer will be entitled to classify such Restricted Payment (or portion thereof) on the date of its payment or later reclassify such Restricted Payment (or portion thereof) in any manner that complies with this covenant.

Limitations on Liens

The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or permit or suffer to exist any Lien of any nature whatsoever against any assets of the Issuer or any Restricted Subsidiary (including Equity Interests of a Restricted Subsidiary but excluding Equity Interests or assets of the Excluded Joint Venture), whether owned at the Issue Date or thereafter acquired, or any proceeds therefrom, or assign or otherwise convey any right to receive income or profits therefrom securing any Indebtedness (other than Permitted Liens).

Limitations on Asset Sales

The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Sale unless:

(i) The Issuer or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets included in such Asset Sale;

(ii) Either at least 75% of the total consideration received in such Asset Sale consists of cash or Cash Equivalents; and

(iii) With respect to any Asset Sale of any Notes Collateral, the Net Available Proceeds from such Asset Sale are paid directly by the purchaser thereof to an Asset Sale Proceeds Account over which the Noteholder Collateral Agent has a fully perfected first-priority lien (subject to Permitted Liens) pursuant to arrangements reasonably satisfactory to the Noteholder Collateral Agent for application in accordance with this covenant.

For purposes of clause (ii) above, the following shall be deemed to be cash:

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(i) The amount (without duplication) of any Indebtedness (other than Subordinated Indebtedness) of the Issuer or such Restricted Subsidiary that is expressly assumed by the transferee in such Asset Sale and with respect to which the Issuer or such Restricted Subsidiary, as the case may be, is unconditionally released by the holder of such Indebtedness,

(ii) The amount of any obligations received from such transferee that are within 90 days converted by the Issuer or such Restricted Subsidiary to cash (to the extent of the cash actually so received), and

(iii) The Fair Market Value of (i) any assets (other than securities) received by the Issuer or any Restricted Subsidiary to be used by it in the Permitted Business, (ii) Equity Interests in a Person that is a Restricted Subsidiary or in a Person engaged in a Permitted Business that shall become a Restricted Subsidiary immediately upon the acquisition of such Person by the Issuer or (iii) a combination of (i) and (ii).

If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary, as the case may be, pursuant to clause (ii) of the preceding paragraph in connection with any Asset Sale is repaid or converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then the date of such repayment, conversion or disposition shall be deemed to constitute the date of an Asset Sale hereunder and the Net Available Proceeds thereof shall be applied in accordance with this covenant.

If the Issuer or any Restricted Subsidiary engages in an Asset Sale, the Issuer or such Restricted Subsidiary shall, by no later than 12 months following the later of the consummation thereof and the Issuer s or Restricted Subsidiary s receipt of the Net Available Proceeds, have applied all or any of the Net Available Proceeds therefrom to:

(i) If such Net Available Proceeds are proceeds of an Asset Sale of any asset that constitutes Collateral, prepay permanently or repay permanently any Indebtedness secured by such Collateral Security Documents; *provided*, that if such Net Available Proceeds are proceeds of an Asset Sale of ABL Collateral, such Net Available Proceeds shall be applied as required under the ABL Facility;

(ii) If such Net Available Proceeds are proceeds of any Asset Sale (other than an Asset Sale of Collateral), to permanently reduce any Other Pari Passu Indebtedness; *provided*, *however*, that if any Pari Passu Indebtedness is so reduced, the Issuer will equally and ratably reduce Indebtedness under the Notes by making an offer to all holders of Notes to purchase at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, the pro rata principal amount of the Notes; or

(iii) (A) invest in the purchase of assets (other than securities) to be used by the Issuer or any Restricted Subsidiary in, or make capital expenditure with respect to, the Permitted Business, (B) acquire Equity Interests in a Person that is a Guarantor or in a Person engaged in a Permitted Business that shall become a Guarantor immediately upon the consummation of such acquisition or (C) a combination of (A) and (B). The Issuer will be deemed to have complied with the provisions set forth in this paragraph if (i) within 365 days after the Asset Sale that generated the Net Available Proceeds, the Issuer (or the applicable Restricted Subsidiary) has entered into and not abandoned or rejected a binding agreement to acquire all or substantially all of the assets of, or any Equity Interests of another Permitted Business or to make a capital expenditure or acquire other assets that are used or useful in a Permitted Business or to make a capital expenditure or acquire other assets that are used or useful in a Permitted Business and that acquisition or capital expenditure is thereafter completed within 180 days after the end of such 365-day period or (ii) in the event such binding agreement described in the preceding clause (i) is canceled or terminated for any reason before such Net Available Proceeds are applied, the Issuer (or the applicable Restricted Subsidiary) enters into another such binding commitment within 180 days of such cancellation or termination of the prior binding commitment; *provided* that if any second binding commitment is later canceled or terminated for any reason or not entered into before such Net Available Proceeds are applied within 180 days of such second binding commitment, then such Net Available Proceeds shall constitute Excess Proceeds (as defined below). In addition, during the period following the entering into of a binding agreement with respect to an Asset Sale and prior to the consummation thereof (which period cannot exceed 365 days), cash (whether or not actual Net Available Proceeds of such Asset Sale) used for the purposes described in subclause (A), (B) and (C) of this clause (iii) that are designated as uses in accordance with this clause (iii), and not previously or subsequently so designated in respect of any other Asset Sale, shall be deemed to be Net Available Proceeds applied in accordance with this clause (iii).

The amount of Net Available Proceeds not applied or invested as provided in this paragraph will constitute **Excess Proceeds**.

When the aggregate amount of Excess Proceeds equals or exceeds $15.0 million, the Issuer will be required to make an offer to purchase from all Holders and, if applicable, make an offer to purchase or redeem any Other Pari Passu Lien Obligations of the Issuer the provisions of which require the Issuer to do so with the proceeds from any Asset Sales, in an aggregate principal amount of Notes and such Other Pari Passu Lien Obligations equal to the amount of such Excess Proceeds as follows:

(i) The Issuer will (a) make an offer to purchase (a **Net Proceeds Offer**) to all Holders in accordance with the procedures set forth in the Indenture, and (b) make an offer to purchase or redeem any such Other Pari Passu Lien Obligations (and permanently reduce the related loan commitment (if any) in an amount equal to the principal amount so redeemed), pro rata in proportion to the respective principal amounts of the Notes and such other Indebtedness required to be redeemed or purchased, the maximum principal amount of Notes and Other Pari Passu Lien Obligations that may be purchased or redeemed out of the amount (the **Payment Amount**) of such Excess Proceeds;

(ii) The offer price for the Notes will be payable in cash in an amount equal to 100% of the principal amount of the Notes tendered pursuant to a Net Proceeds Offer, plus accrued and unpaid interest thereon, if any, to the date such Net Proceeds Offer is consummated (the **Offered Price**), in accordance with the procedures set forth in the Indenture and the redemption price for such Other Pari Passu Lien Obligations (the **Pari Passu Indebtedness Price**) shall be as set forth in the related documentation governing such Indebtedness;

(iii) If the aggregate Offered Price of Notes validly tendered and not withdrawn by Holders thereof exceeds the *pro rata* portion of the Payment Amount allocable to the Notes, Notes to be purchased will be selected on a *pro rata* basis; and

(iv) Upon completion of such Net Proceeds Offer in accordance with the foregoing provisions, the amount of Excess Proceeds with respect to which such Net Proceeds Offer was made shall be deemed to be zero, if applicable, and released from the Asset Sale Proceeds Account.

To the extent that the sum of the aggregate Offered Price of Notes tendered pursuant to a Net Proceeds Offer and the aggregate Pari Passu Indebtedness Price paid to the holders of such Other Pari Passu Lien Obligations is less than the Payment Amount relating thereto (such difference constituting a **Net Proceeds Surplus**), the Issuer may use the Net Proceeds Surplus, or a portion thereof, for general corporate purposes, subject to the provisions of the Indenture.

Upon the commencement of a Net Proceeds Offer, the Issuer shall send, by first class mail, a notice to the Trustee and to each Holder at is registered address. The notice shall contain all instructions and materials necessary to enable such Holder to tender Notes pursuant to the Net Proceeds Offer. Any Net Proceeds Offer shall be made to all Holders. The notice, which shall govern the terms of the Net Proceeds Offer, shall state:

(i) That the Net Proceeds Offer is being made pursuant to this covenant;

(ii) The Payment Amount, the Offered Price, and the date on which Notes tendered and accepted for payment shall be purchased, which date shall be at least 30 days and not later than 60 days from the date such notices is mailed (the **Net Proceeds Payment Date**);

(iii) That any Notes not tendered or accepted for payment shall continue to accrue interest;

(iv) That, unless the Issuer defaults in making such payment, any Notes accepted for payment pursuant to the Net Proceeds Offer shall cease to accrue interest on and after the Net Proceeds Payment Date;

(v) That Holders electing to have any Notes purchased pursuant to any Net Proceeds Offer shall be required to surrender the Notes, with the form entitled Option of Holder to Elect Purchase on the reverse of the Note completed, or transfer by book-entry transfer, to the Issuer, a Depositary, if appointed by the Issuer, or the Paying Agent at the address specified in the notice at least three days before the Net Proceeds Payment Date;

(vi) That Holders shall be entitled to withdraw their election if the Issuer, the Depositary or the Paying Agent, as the case may be, receives, not later than the Net Proceeds Payment Date, a notice setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(vii) That if the aggregate principal amount of Notes surrendered by Holders exceeds the Payment Amount, the Issuer shall select the Notes to be purchased on a *pro rata* basis (with such adjustments as may be deemed appropriate by the Issuer so that only Notes in denominations of $1,000, or integral multiples thereof, shall be purchased); and

(viii) That Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry).

On the Net Proceeds Payment Date, the Issuer shall, to the extent lawful: (1) accept for payment all Notes or portions thereof properly tendered pursuant to the Net Proceeds Offer, subject to pro ration if the aggregate Notes tendered exceed the Payment

Amount allocable to the Notes; (2) deposit with the Paying Agent U.S. Legal Tender equal to the lesser of the Payment Amount allocable to the Notes and the amount sufficient to pay the Offered Price in respect of all Notes or portions thereof so tendered; and (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers Certificate stating the aggregate principal amount of Notes or portions thereof being repurchased by the Issuer. The Issuer shall publicly announce the results of the Net Proceeds Offer on the Net Proceeds Payment Date.

The Paying Agent shall promptly mail to each Holder of Notes so tendered the Offered Price for such Notes, and the Trustee shall promptly authenticate pursuant to an Authentication Order and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to any unrepurchased portion of the Notes surrendered, if any; *provided,* that each such new Note shall be in principal amount of $1,000 or an integral multiple thereof. However, if the Net Proceeds Payment Date is on or after an interest Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the Close of Business on such Record Date, and no Additional Interest shall be payable to Holders who tender Notes pursuant to the Net Proceeds Offer.

The Issuer will comply with applicable tender offer rules, including the requirements of Rule 14e-1 under the Exchange Act and any other applicable laws and regulations in connection with the purchase of Notes pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this covenant, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this covenant by virtue of this compliance.

Limitations on Transactions with Affiliates

The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, in one transaction or a series of related transactions, sell, lease, transfer or otherwise dispose of any of its assets to, or purchase any assets from, or enter into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (an **Affiliate Transaction**), unless:

(i) Such Affiliate Transaction is on terms that are no less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction at such time on an arm s-length basis by the Issuer or that Restricted Subsidiary from a Person that is not an Affiliate of the Issuer or that Restricted Subsidiary; and

(ii) The Issuer delivers to the Trustee:

(x) With respect to any Affiliate Transaction involving aggregate value in excess of $5.0 million, an Officers Certificate certifying that such Affiliate Transaction complies with clause (1) above and (x) a Secretary s Certificate which sets forth and authenticates a resolution that has been adopted by a majority of the directors of the Issuer who are disinterested with respect to such Affiliate Transaction, approving such Affiliate Transaction or (y) if there are no such disinterested directors, a written opinion described in clause (y) below; and

(y) With respect to any Affiliate Transaction involving aggregate value of $10.0 million or more, the certificates described in the preceding clause (x) and a written opinion as to the fairness of such Affiliate Transaction to the Issuer or such Restricted Subsidiary from a financial point of view issued by an Independent Financial Advisor to the Board of Directors of the Issuer.

The foregoing restrictions will not apply to:

(i) Transactions exclusively between or among (a) the Issuer and one or more Restricted Subsidiaries or (b) Restricted Subsidiaries;

(ii) Reasonable director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans), indemnification arrangements, compensation, employment and severance agreements, in each case approved by the Board of Directors;

(iii) The entering into of a tax sharing agreement, or payments pursuant thereto, between the Issuer and/or one or more Subsidiaries, on the one hand, and any other Person with which the Issuer or such Subsidiaries are required or permitted to file a consolidated tax return or with which the Issuer or such Subsidiaries are part of a consolidated group for tax purposes, on the other hand, which payments by the Issuer and the Restricted Subsidiaries are not in excess of the tax liabilities that would have been payable by them on a stand-alone basis;

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(iv) Any Restricted Payments which are made in accordance with Limitations on Restricted Payments, any Permitted Investment or any Permitted Lien;

(v) Entering into an agreement that provides registration rights to the shareholders of the Issuer or amending any such agreement with shareholders of the Issuer and the performance of such agreements;

(vi) Any transaction with a joint venture or similar entity which would constitute an Affiliate Transaction solely because the Issuer or a Restricted Subsidiary owns an equity interest in or otherwise controls such joint venture or similar entity; *provided,* that no Affiliate of the Issuer or any of its Subsidiaries other than the Issuer or a Restricted Subsidiary shall have a beneficial interest in such joint venture or similar entity;

(vii) Any merger, consolidation or reorganization of the Issuer with an Affiliate, solely for the purposes of (a) reorganizing to facilitate an initial public offering of securities of the Issuer or any holding company of the Issuer, (b) forming a holding company or (c) reincorporating the Issuer in a new jurisdiction;

(viii) (a) Any agreement in effect on the Issue Date and disclosed in the Offering Memorandum, as in effect on the Issue Date or as thereafter amended or replaced in any manner, that, taken as a whole, is not more adverse to the interests of the Holders in any material respect than such agreement as it was in effect on the Issue Date or (b) any transaction pursuant to any agreement referred to in the immediately preceding clause (a);

(ix) Any contributions to the common equity capital of the Issuer;

(x) Pledges of Equity Interests of Unrestricted Subsidiaries;

(xi) The Transactions and/or the payment of any reasonable fees or expenses to the extent incurred as of the Issue Date in connection therewith if documented as of Issue Date;

(xii) Transactions with an Affiliate where the only consideration paid is Qualified Equity Interests of the Issuer;

(xiii) Payment of loans (or cancellation of loans) to employees or consultants in the ordinary course of business in aggregate amount not to exceed $2.0 million; or

(xiv) Supply and purchase contracts with joint ventures entered into the ordinary course of business consistent with past practice.

Limitations on Dividend and Other Restrictions Affecting Restricted Subsidiaries

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

(a) Pay dividends or make any other distributions on or in respect of its Equity Interests;

(b) Make loans or advances or pay any Indebtedness or other obligation owed to the Issuer or any other Restricted Subsidiary; or

(c) Transfer any of its assets to the Issuer or any other Restricted Subsidiary;

except for:

(i) Encumbrances or restrictions existing under or by reason of applicable law, regulation or order;

(ii) Encumbrances or restrictions existing under, or otherwise required by or imposed pursuant to the terms of Note Documents;

(iii) Non-assignment provisions of any contract or any lease entered into in the ordinary course of business;

(iv) Encumbrances or restrictions existing under or required by or otherwise imposed pursuant to the terms of agreements existing on the date of the Indenture (including, without limitation, the Credit Agreement) as in effect on that date;

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(v) Restrictions relating to any Lien permitted under the Indenture imposed by the holder of, or otherwise required by or imposed pursuant to the terms of such Lien;

(vi) Restrictions imposed under any agreement to sell assets permitted under the Indenture to any Person pending the closing of such sale;

(vii) Any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;

(viii) Any other agreement governing Indebtedness entered into after the Issue Date that contains encumbrances and restrictions that are not materially more restrictive, taken as a whole, with respect to any Restricted Subsidiary than those in effect on the Issue Date with respect to that Restricted Subsidiary pursuant to agreements in effect on the Issue Date;

(ix) Customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture, asset sale and stock sale agreements and other similar agreements entered into in the ordinary course of business that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture or similar Person;

(x) Purchase Money Indebtedness incurred in compliance with Limitations on Additional Indebtedness that impose restrictions of the nature described in clause (c) above on the assets acquired;

(xi) Restrictions on cash or other deposits or net worth imposed by suppliers or landlords under contracts entered into in the ordinary course of business;

(xii) Encumbrances or restrictions contained in security agreements or mortgages securing Indebtedness of a Restricted Subsidiary to the extent such encumbrances or restrictions restrict the transfer of assets subject to such security agreements or mortgages;

(xiii) Encumbrances or restrictions contained in Indebtedness of Foreign Subsidiaries, or municipal loan or related agreements entered into in connection with the incurrence of industrial revenue bonds, permitted to be incurred under the Indenture; *provided,* that any such encumbrances or restrictions are ordinary and customary with respect to the type of Indebtedness being incurred under the relevant circumstances and do not, in the good faith judgment of the Board of Directors of the Issuer, materially impair the Issuer s ability to make payment on the Notes when due; and

(xiv) Any encumbrances or restrictions imposed by any amendments or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xiii) above; *provided,* that such amendments or refinancings are no more materially restrictive, taken as a whole, with respect to such encumbrances and restrictions than those prior to such amendment or refinancing.

Additional Note Guarantees

The Issuer will cause each Subsidiary (including any newly formed or newly acquired Subsidiary or newly designated Restricted Subsidiary) (other than any designated Unrestricted Subsidiary, Foreign Subsidiary or the Excluded Joint Venture) to, within twenty (20) days of its acquisition, formation or designation to:

(i) In case of a newly formed or newly acquired Subsidiary, be designated as a Restricted Subsidiary;

(ii) Execute and deliver to the Trustee (a) a supplemental indenture pursuant to which such Restricted Subsidiary shall unconditionally guarantee all of the Issuer s obligations under the Notes and the Indenture, (b) a notation of guarantee in respect of its Note Guarantee, in each case in form and substance reasonably satisfactory to the Trustee;

(iii) Subject to the terms, conditions and provisions of Further Assurances and the provisions in the Indenture relating to the Security Documents, pledge its assets and have its stock pledged as Collateral pursuant to the Security Documents and execute and deliver to the Trustee (a) a supplement to the Collateral Agreement, (b) a supplement to the Intercreditor Agreement and (c) other applicable Security Documents, in each case in form and substance reasonably satisfactory to the Trustee; and

(iv) Deliver to the Trustee one or more opinions of counsel that such documents required under this covenant, (x) have been duly authorized, executed and delivered by such Restricted Subsidiary and (y) constitute a valid and legally binding obligation of such Restricted Subsidiary in accordance with their terms.

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Thereafter, such Restricted Subsidiary shall be a Guarantor for all purposes of the Indenture.

Each Guarantor will be automatically and unconditionally released and discharged from its obligations under its Note Guarantee and the Indenture under the circumstances set forth in General Note Guarantees Release of a Guarantor.

Further Assurances

To the extent required by applicable law or the Security Documents, or upon reasonable request of the Trustee, the Issuer will, and will cause each Guarantor to, at their sole expense, subject to the terms, conditions and provisions of the Intercreditor Agreement, and the Security Documents promptly: (1) execute, acknowledge and deliver such Security Documents, the Intercreditor Agreement, instruments, financing statements, certificates, notices and other documents, make such filings, recordations and take such other actions as may be reasonably required by applicable law or as may be reasonably necessary or advisable to create and perfect, protect, assure, transfer, confirm or enforce first priority and second priority (as applicable) Liens and security interests in respect of the Collateral (including, without limitation, the filing of financing statements under the Uniform Commercial Code, and customary short-form security agreements with respect to Intellectual Property with the U.S. Patent and Trademark Office and the U.S. Copyright Office and recording of Mortgages on each Material Real Property or other real property constituting Collateral); and (2) subject to the terms, conditions and provisions of the Intercreditor Agreement and the Security Documents, promptly deliver to the Noteholder Collateral Agent certificates, if any, representing the capital stock and membership interests of the Guarantors. In addition, from time to time, the Issuer will reasonably promptly secure the obligations under the Indenture, Security Documents and Intercreditor Agreement by pledging or creating, or causing to be pledged or created, perfected security interests with respect to the Collateral, in each case to the extent reasonably requested by the Trustee, and in accordance with the Security Documents (including the Intercreditor Agreement). Such security interests and Liens will be created under the Security Documents in form and substance reasonably satisfactory to the Trustee, and the Issuer will deliver or cause to be delivered to Trustee all such instruments and documents (including certificates, legal opinions, title insurance policies and lien searches) as the Trustee shall reasonably request to evidence compliance with this covenant. The Issuer agrees to provide promptly after reasonable request by the Trustee such evidence as to the perfection and priority status of each such security interest and Lien. In furtherance of the foregoing, the Issuer will give prompt notice to the Trustee of the acquisition by it or any of the Guarantors after the Issue Date of any new Material Real Property. With respect to any fee interest in any Material Real Property located in the United States (individually and collectively, the **Premises**) owned by the Issuer or a Guarantor on the Issue Date or acquired by the Issuer or a Guarantor after the Issue Date, the Issuer or Guarantor will, in case of properties existing on the Issue Date, within 75 days after the Issue Date and, in case of future acquired properties, within 75 days of such acquisition, as applicable, deliver to the Noteholder Collateral Agent the following documents and instruments with respect to any such acquired Material Real Property that does not constitute an Excluded Asset:

(a) The Issuer will deliver to the Noteholder Collateral Agent, as mortgagee, fully executed counterparts of Mortgages duly executed by the Issuer or the applicable Guarantor, together with evidence of the completion (or reasonably satisfactory arrangements for the completion) of all recordings and filings of such Mortgages (and payment of any taxes or fees in connection therewith) as may be reasonably necessary to create a valid, perfected Lien against the properties purported to be covered thereby;

(b) The Issuer will deliver to the Noteholder Collateral Agent, at the Issuer s sole cost and expense, mortgagee s title insurance policies in favor of the Noteholder Collateral Agent, as mortgagee for the ratable benefit of itself and the Holders of the Notes in an amount equal to 110% of the net book value of the applicable Material Real Property, and in the form necessary, with respect to the property purported to be covered by such Mortgage, to insure that that the interests created by the Mortgage constitute valid Liens thereon free and clear of all Liens other than Permitted Liens, and such policies will also include, to the extent available, such other advisable lenders endorsements and shall be accompanied by evidence of the payment in full of all premiums thereon; and

(c) The Issuer will, or will cause the Guarantors to, deliver to the Noteholder Collateral Agent, at the Issuer s sole cost and expense, with respect to each such Material Real Property, (i) corporate and local law Opinions of Counsel, as the Noteholder Collateral Agent or the Trustee shall reasonably request (which opinions shall confirm, among other

things, the due authorization, execution and delivery and the enforceability of such Mortgages in accordance with their terms), (ii) ALTA surveys in form and substance reasonably acceptable to the title company to cause the title company to remove the standard survey exception and to issue a survey endorsement with respect to each of the title policies referenced in clause (b) above, and (iii) such affidavits that the title company shall reasonably request in connection with the issuance of the title policies referenced in clause (b) above.

Reports to Holders

Whether or not required by the SEC, so long as any Notes are outstanding, the Issuer will furnish to the Holders of Notes, or file electronically with the SEC through the SEC s Electronic Data Gathering, Analysis and Retrieval System (or any successor system), within the time periods that would be applicable to the Issuer if it were subject to Section 13(a) or 15(d) of the Exchange Act:

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(i) All quarterly and annual financial and other information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Issuer were required to file these Forms; and

(ii) All current reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file these reports.

In addition, whether or not required by the SEC, the Issuer will file a copy of all of the information and reports referred to in clauses (i) and (ii) above with the SEC for public availability within the time periods specified in the SEC s rules and regulations (unless the SEC will not accept the filing) and make the information available to securities analysts and prospective investors upon request.

Notwithstanding anything to the contrary, the Issuer will be deemed to have complied with its obligations in the preceding two paragraphs following the filing of the Shelf Registration Statement and prior to the effectiveness thereof if the Shelf Registration Statement includes the information specified in clause (i) above at the times it would otherwise be required to file such Forms. If any direct or indirect parent of the Issuer has complied with the reporting requirements of Section 13 or 15(d) of the Exchange Act, if applicable, and has furnished the Holders of Notes, or filed electronically with the SEC s Electronic Data Gathering, Analysis and Retrieval System (or any successor system), the reports described herein with respect to such parent (including any financial information required by Regulation S-X relating to the Issuer and the Guarantors), the Issuer shall be deemed to be in compliance with the provisions of this covenant.

The Issuer and the Guarantors have agreed that, for so long as any Notes remain outstanding, the Issuer will furnish to the Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act. Until the filing of the Shelf Registration Statement, nothing shall be construed to require the Issuer to include in any such reports any information specified in Rule 3-10 or 3-16 of Regulation S-X.

Limitations on Designation of Unrestricted Subsidiaries

The Issuer may designate any Subsidiary (including any newly formed or newly acquired Subsidiary) of the Issuer as an Unrestricted Subsidiary under the Indenture (a **Designation**) only if:

(i) No Default shall have occurred and be continuing at the time of or after giving effect to such Designation; and

(ii) Either (A) the Subsidiary to be so Designated has total assets of $1,000 or less; or (B) the Issuer would be permitted to make, at the time of such Designation, (x) a Permitted Investment or (y) an Investment pursuant to the first paragraph of Limitations on Restricted Payments, in either case, in an amount (the **Designation Amount**) equal to the Fair Market Value of the Issuer s proportionate interest in such Subsidiary on such date.

No Subsidiary may be Designated as an Unrestricted Subsidiary if such Subsidiary or any of its Subsidiaries owns (i) (A) any Equity Interests (other than Qualified Equity Interests) of the Issuer or (B) any Equity Interests of any Restricted Subsidiary that is not a Subsidiary of the Subsidiary to be so Designated or (ii) is a Person with respect to which neither the Issuer nor any Restricted Subsidiary has any direct or indirect obligations (A) to subscribe for additional Equity Interests or (B) to maintain or preserve the Person s financial condition or cause the Person to achieve any specified levels of operating results, unless such obligation is a Permitted Investment or is otherwise permitted under Limitations on Restricted Payments.

If, at any time, any Unrestricted Subsidiary fails to meet the requirements of the two preceding paragraphs as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture and any Indebtedness of the Subsidiary and any Liens on assets of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary as of the date and, if the Indebtedness is not permitted to be incurred under Limitations on Additional Indebtedness or the Lien is not permitted under Limitations on Liens, the Issuer shall be in default of the applicable covenant.

The Issuer may redesignate an Unrestricted Subsidiary as a Restricted Subsidiary (a **Redesignation**) only if:

(i) No Default shall have occurred and be continuing at the time of and after giving effect to such Redesignation; and

(ii) All Liens, Indebtedness and Investments of such Unrestricted Subsidiary outstanding immediately following such Redesignation would, if incurred or made at such time, have been permitted to be incurred or made for all purposes of the Indenture.

All Designations and Redesignations must be evidenced by resolutions of the Board of Directors of the Issuer, delivered to the Trustee, certifying compliance with the foregoing provisions.

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Information Regarding Collateral

The Issuer will furnish to the Noteholder Collateral Agent and the Trustee, with respect to the Issuer or any Guarantor, prompt written notice at least fifteen (15) days prior to any change in such Person s (i) corporate name, (ii) jurisdiction of organization or formation, (iii) identity or corporate structure or (iv) Federal Taxpayer Identification Number. The Issuer also agrees promptly to notify the Noteholder Collateral Agent and the Trustee if any material portion of the Collateral is damaged or destroyed.

Each year, at the time of delivery of the annual financial statements with respect to the preceding fiscal year, the Issuer shall deliver to the Trustee a certificate of a financial officer setting forth the information required pursuant to the Perfection Certificate or confirming that there has been no change in such information since the date of the prior delivered Perfection Certificate.

Impairment of Security Interest

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, take or knowingly or negligently omit to take, any action which action or omission would reasonably be expected to have the result of materially impairing the security interest with respect to the Collateral for the benefit of Noteholder Secured Parties, except as expressly permitted by Amendment, Supplement and Waiver or the provisions of the Indenture regarding the Security Documents, the Security Documents or the Intercreditor Agreement.

Insurance

The Issuer and Guarantors (x) will cause any insurance policies covering any Collateral to be endorsed or otherwise amended to include a customary lender s loss payable endorsement, in form and substance reasonably satisfactory to the Trustee, which endorsement shall provide that, from and after the Issue Date, subject to the terms, conditions and provisions of the Intercreditor Agreement, if the insurance carrier shall have received written notice from the Trustee of the occurrence and continuance of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Grantors under such policies directly to the Trustee during the continuance of an Event of Default; (y) cause each such policy to provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium upon not less than 10 days prior written notice thereof by the insurer to the Trustee (giving the Trustee the right to cure defaults in the payment of premiums) or (ii) for any other reason upon not less than 30 days prior written notice thereof by the insurer to the Trustee; (c) will deliver to the Trustee, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a draft copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Trustee) and reasonably promptly thereafter deliver a duplicate original copy of such policy together with evidence reasonably satisfactory to the Trustee of payment of the premium as required by such insurance.

The Grantors will notify the Trustee promptly whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this covenant is taken out by any Grantor; and promptly deliver to the Trustee a duplicate copy of such policy or policies.

Consolidated Secured Debt Ratio

Commencing April 1, 2012, the Issuer will not permit the Consolidated Secured Debt Ratio as at the last day of each fiscal month for any period set forth below to exceed:

Period		Consolidated Secured Debt Ratio
April 1, 2012	March 31, 2013	7.50 : 1.00
April 1, 2013	March 31, 2014	7.00 : 1.00
April 1, 2014	March 31, 2015	6.75 : 1.00
April 1, 2015	and thereafter	6.50 : 1.00

Limitations on Mergers, Consolidations, Etc.

The Issuer will not, directly or indirectly, in a single transaction or a series of related transactions, (i) consolidate or merge with or into another Person (other than a merger with an Affiliate solely for the purpose of and with the effect of changing the Issuer s jurisdiction of incorporation to another State of the United States or forming a holding company for the Issuer (*provided* that such holding company becomes a Guarantor)), or sell, lease,

transfer, convey or otherwise dispose of or assign all or substantially all of the

assets of the Issuer or the Issuer and the Restricted Subsidiaries (taken as a whole) or (ii) adopt a Plan of Liquidation unless, in either case:

(i) Either:

(1) The Issuer will be the surviving or continuing Person; or

(2) The Person formed by or surviving such consolidation or merger or to which such sale, lease, conveyance or other disposition shall be made (or, in the case of a Plan of Liquidation, any Person to which assets are transferred) (collectively, the **Successor**) is a corporation, limited liability company or limited partnership organized and existing under the laws of any State of the United States or the District of Columbia, and the Successor expressly assumes, by supplemental indenture, security documents and intercreditor agreement in form and substance reasonably satisfactory to the Trustee, all of the obligations of the Issuer under the Notes, the Indenture, the applicable Security Documents, the Intercreditor Agreement and the Registration Rights Agreement; *provided,* that if such Person is a limited liability company or a partnership, such Person will form a Wholly Owned Restricted Subsidiary that is a corporation and cause such Subsidiary to become a co-issuer of the Notes; and

(ii) Immediately prior to and immediately after giving effect to such transaction and the assumption of the obligations as set forth above and the incurrence of any Indebtedness to be incurred in connection therewith, and the use of any net proceeds therefrom on a pro forma basis, no Default shall have occurred and be continuing.

For purposes of this covenant, any Indebtedness of the Successor which was not Indebtedness of the Issuer immediately prior to the transaction shall be deemed to have been incurred in connection with such transaction.

Except as provided in General Note Guarantees Release of a Guarantor, no Guarantor may consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, unless:

(i) Either:

(1) Such Guarantor will be the surviving or continuing Person; or

(2) The Person formed by or surviving any such consolidation or merger assumes, by supplemental indenture, security documents and intercreditor agreement in form and substance reasonably satisfactory to the Trustee, all of the obligations of such Guarantor under the Note Guarantee of such Guarantor, the Indenture, the applicable Security Documents, the Intercreditor Agreement and the Registration Rights Agreement, and is a corporation, limited liability company or limited partnership organized and existing under the laws of any State of the United States or the District of Columbia; and

(ii) Immediately after giving effect to such transaction, no Default shall have occurred and be continuing.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries, the Equity Interests of which constitute all or substantially all of the properties and assets of the Issuer, will be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

Upon any consolidation, combination or merger of the Issuer or a Guarantor, or any transfer of all or substantially all of the assets of the Issuer in accordance with the foregoing, in which the Issuer or such Guarantor is not the continuing obligor under the Notes or its Note Guarantee, except as provided in General Note Guarantees Release of a Guarantor, the surviving entity formed by such consolidation or into which the Issuer or such Guarantor is merged or the Person to which the conveyance, lease or transfer is made will succeed to, and be substituted for, and may exercise every right and power of, the Issuer or such Guarantor under the Indenture, the Notes, the Note Guarantees, the Security Documents and Intercreditor Agreement with the same effect as if such surviving entity had been named therein as the Issuer or such Guarantor and, except in the case of a lease, the Issuer or such Guarantor, as the case may be, will be released from the obligation to pay the principal of and interest on the Notes or in respect of its Note Guarantee, as the case may be, and all of the Issuer s or such Guarantor s other obligations and covenants under the Notes, the Indenture and its Note Guarantee, if applicable.

Notwithstanding the foregoing, any Restricted Subsidiary may consolidate with, merge with or into or convey, transfer or lease, in one transaction or a series of transactions, all or substantially all of its assets to the Issuer or another Restricted Subsidiary; *provided,* that if any party to any such transaction is a Note Party, the surviving entity, as the case may be, shall be a Note Party.

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Events of Default

Each of the following is an **Event of Default**;

(i) Failure by the Issuer to pay interest on any of the Notes when it becomes due and payable and the continuance of any such failure for thirty (30) days;

(ii) Failure by the Issuer to pay the principal on any of the Notes when it becomes due and payable, whether at Stated Maturity, upon redemption, upon a Fundamental Change of Control Purchase Date, upon acceleration or otherwise;

(iii) Failure by the Issuer to comply with its obligations to convert Notes in accordance with the Indenture upon exercise of a Holder s conversion right and such failure continues for a period of ten (10) days;

(iv) Failure by the Issuer to provide a Fundamental Change of Control Notice to Holders in accordance with the terms of the Indenture and such failure continues for a period of ten (10) days;

(v) Failure by the Issuer to issue Additional Shares or make the relevant Make Whole Payment in accordance with the Indenture and such failure continues for a period of ten (10) days;

(vi) Failure by the Issuer to pay the Cash Conversion Amount in accordance with the Indenture and such failure continues for a period of fifteen (15) days;

(vii) Failure by the Issuer to comply with Certain Covenants Limitations on Mergers, Consolidations, Etc. or in respect of its obligations to purchase Notes upon a Fundamental Change of Control (whether or not such compliance is prohibited by the subordination provisions of the Indenture);

(viii) Failure by the Issuer or any Guarantor (A) to comply with any other agreement or covenant in the Indenture (other than the Consolidated Secured Debt Ratio covenant), the Security Documents or the Intercreditor Agreement and continuance of this failure for 60 days after notice of the failure has been given to the Issuer by the Trustee or by the Holders of at least 25% of the aggregate principal amount of the Notes then outstanding and (B) to comply with the Consolidated Secured Debt Ratio covenant and continuance of this failure to comply for 30 days after notice of the failure has been given to the Issuer by the Trustee or by Holders of at least 25% of the aggregate principal amount of the Notes then outstanding;

(ix) Event of default under any mortgage, indenture or other instrument or agreement under which there is issued Indebtedness of the Issuer or any Restricted Subsidiary, whether such Indebtedness now exists or is incurred after the Issue Date, if such event of default is a default relating to a failure to pay at stated maturity thereof or would enable or permit the holder or holders thereof or any trustee or agent on their behalf to cause such Indebtednesss to become due and payable prior to scheduled maturity and such event of default continues for a period of twenty (20) days, *provided,* that the principal amount of such Indebtedness, together with any other Indebtedness with respect to which a default has occurred and is continuing, aggregates $10.0 million or more;

(x) One or more final non-appealable judgments or orders that exceed $10.0 million in the aggregate (net of amounts covered by insurance or bonded) for the payment of money have been entered by a court or courts of competent jurisdiction against the Issuer or any Restricted Subsidiary and such judgment or judgments have not been satisfied, stayed, annulled, discharged or rescinded within 60 days after the applicable judgment becomes final and non-appealable;

(xi) The Issuer or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(1) Commences a voluntary case,

(2) Consents to the entry of an order for relief against it in an involuntary case,

(3) Consents to the appointment of a Custodian of it or for all or substantially all of its assets, or

(4) Makes a general assignment for the benefit of its creditors;

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

(1) Is for relief against the Issuer or any Significant Subsidiary as debtor in an involuntary case,

(2) Appoints a Custodian of the Issuer or any Significant Subsidiary or a Custodian for all or substantially all of the assets of the Issuer or any Significant Subsidiary, or

(3) Orders the liquidation of the Issuer or any Significant Subsidiary,

and the order or decree remains unstayed and in effect for 60 consecutive days;

(xiii) Any Note Guarantee of any Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Note Guarantee and the Indenture) or is declared null and void and unenforceable or found to be invalid or any Guarantor denies its liability under its Note Guarantee (other than by reason of release of a Guarantor from its Note Guarantee in accordance with the terms of the Indenture and the Note Guarantee); or

(xiv) Any security interest and Lien purported to be created by any Security Document with respect to any Collateral, individually or in the aggregate, having a fair market value in excess of $5.0 million at any time shall cease to be in full force and effect, or shall cease to give the Noteholder Collateral Agent, for the benefit of the applicable Noteholder Secured Parties, the Liens, rights, powers and privileges purported to be created and granted thereby (including a perfected first priority security interest in and Lien on, all of the Collateral thereunder (except as otherwise expressly provided in the Indenture, the Intercreditor Agreement or Security Documents)) in favor of the Noteholder Collateral Agent, or shall be asserted by the Issuer or any other Guarantor not to be, (or any action shall be taken by the Issuer or any Guarantor to discontinue unless otherwise permitted) a valid, perfected, first priority (except as otherwise expressly provided in the Indenture, the Intercreditor Agreement or Security Documents) security interest in or Lien on the Collateral covered thereby; except in each case to the extent that any such loss of perfection or priority results from the failure of the Trustee or Noteholder Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Security Documents) or take other actions required to maintain the creation, perfection or priority of such security interest and Lien.

If an Event of Default specified in clause (xi) or (xii) above with respect to the Issuer occurs, all outstanding Notes will become due and payable without any further action or notice. If an Event of Default (other than an Event of Default specified in clause (xi) or (xii) above with respect to the Issuer) occurs and is continuing under the Indenture, the Trustee, by written notice to the Issuer, or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding, by written notice to the Issuer and the Trustee, may declare (an **acceleration declaration**) all amounts owing under the Notes to be due and payable immediately. Upon such acceleration declaration, the aggregate principal of and accrued and unpaid interest on the outstanding Notes will become due and payable immediately; *provided*, *however*, that after such acceleration, but before a judgment or decree based on acceleration, the Holders of a majority in aggregate principal amount of such outstanding Notes may rescind and annul such acceleration:

(i) if the rescission would not conflict with any judgment or decree;

(ii) if all existing Events of Default have been cured or waived except nonpayment of principal and interest that has become due solely because of this acceleration;

(iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid;

(iv) if the Issuer has paid to the Trustee its reasonable compensation and reimbursed the Trustee of its expenses, disbursements and advances; and

(v) in the event of a cure or waiver of an Event of Default of the type set forth in clause (xi) or (xii) in the first paragraph of this Events of Default section, the Trustee shall have received an Officers Certificate and an Opinion of Counsel that such Event of Default has been cured or waived.

No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Subject to the terms, conditions, and provisions of the Intercreditor Agreement, if an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or interest on, the Notes or to enforce the performance of any provision of the Notes or the Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default.

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Subject to the provisions of the Indenture, the Holders of a majority in principal amount of the outstanding Notes by notice to the Trustee may waive an existing Default and its consequences, except a continuing Default in the payment of principal of, or interest on, any Note as specified in clause (i) or (ii) of the first paragraph of this Events of Default section; *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then-outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. When a Default is waived, it is cured and ceases.

The Holders of not less than a majority in principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. Subject to the duties of the Trustee in the Indenture, however, the Trustee may refuse to follow any direction that conflicts with any law or the Indenture, that the Trustee determines may be unduly prejudicial to the rights of another Holder, or that may involve the Trustee in personal liability; *provided,* that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

In the event the Trustee takes any action or follows any direction pursuant to the Indenture, the Trustee will be entitled to indemnification against any loss or expense caused by taking such action or following such direction.

No Holder will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless the Trustee:

(i) has failed to act for a period of 60 days after receiving written notice of a continuing Event of Default by such Holder and a request to act by Holders of at least 25% in aggregate principal amount of Notes outstanding;

(ii) has been offered indemnity satisfactory to it in its reasonable judgment; and

(iii) has not received from the Holders of a majority in aggregate principal amount of the outstanding Notes a direction inconsistent with such request.

However, such limitations do not apply to a suit instituted by a Holder of any Note for enforcement of payment of the principal of or interest on such Note on or after the due date therefor (after giving effect to the grace period specified in clause (i) in the first paragraph of this Events of Default section).

The Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture and promptly (and in any event within 15 days) after any Officer of the Issuer becomes aware of the occurrence of any Default a statement specifying the Default and what action, if any, the Issuer is taking or proposes to take with respect thereto.

If a Default occurs and is continuing and the Trustee receives actual notice of such Default, the Trustee shall mail to each Holder notice of the uncured Default within 30 days after such Default occurs. Except in the case of a Default in payment of principal of, or interest on, any Note, including an accelerated payment and the failure to make a payment on the Change of Control Payment Date pursuant to a Change of Control Offer or the Net Proceeds Payment Date pursuant to a Net Proceeds Offer, or a Default in complying with the provisions of Certain Covenants Limitations on Mergers, Consolidations, Etc., the Trustee may withhold the notice if and so long as the Board of Directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Trustee in good faith determines that withholding the notice is in the interest of the Holders.

Amendment, Supplement and Waiver

Subject to certain exceptions, the Issuer, the Guarantors and the Trustee and Noteholder Collateral Agent together, with the written consent (which may include consents obtained in connection with a tender offer or exchange offer for Notes) of the Holder or Holders of at least a majority in aggregate principal amount of the Notes then outstanding may amend or supplement the Indenture, the Notes or the Note Guarantees or other Note Documents, without notice to any other Holders. Subject to certain exceptions, the Holder or Holders of a majority in aggregate principal amount of the outstanding Notes may waive compliance with any provision of the Indenture, the Notes or the Note Guarantees or the other Note Documents without notice to any other Holders.

Notwithstanding the above, without the consent of each Holder affected, no amendment or waiver may:

(i) reduce, or change the maturity, of the principal of any Note;

(ii) reduce the rate of or extend the time for payment of interest on any Note;

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(iii) reduce any amounts payable upon redemption, conversion or any Fundamental Change of Control or Conversion Event or change the date on, or the circumstances under, which any Notes are subject to redemption or purchase (other than provisions of Purchase at the Option of Holders Upon a Fundamental Change of Control and Certain Covenants Limitations on Asset Sales, except that if a Fundamental Change of Control has occurred, no amendment or other modification of the obligation of the Issuer to repurchase the Notes upon a Fundamental Change of Control may be made without the consent of each Holder of the Notes affected);

(iv) reduce the Fundamental Change of Control Purchase Price, the number of Additional Shares or Make Whole Payment in connection with a Fundamental Change of Control or the Cash Conversion Amount in connection with a Conversion Event or amend or modify in any manner adverse to the Holders the Issuer s obligations to make such payments;

(v) make any Note payable in money or currency other than that stated in the Notes;

(vi) expressly subordinate in right of payment such Note or any Note Guarantee to any other Indebtedness of the Issuer or any Guarantor;

(vii) reduce the percentage of Holders necessary to consent to an amendment or waiver to the Indenture or the Notes;

(viii) waive a continuing default in the payment of principal of or premium or interest on any Notes (except a rescission of acceleration of the Notes by the Holders thereof as provided in the Indenture and a waiver of the payment default that resulted from such acceleration);

(ix) impair the rights of Holders to receive payments of principal of or interest on the Notes on or after the due date therefor or to institute suit for the enforcement of any payment on the Notes;

(x) release any Guarantor that is a Significant Subsidiary from any of its obligations under its Note Guarantee or the Indenture, except as permitted by the Indenture;

(xi) make any change in these amendment and waiver provisions; or

(xii) make any change that adversely affects the conversion rights of any Holder of the Notes, including any change to the provisions set forth under Conversion.

In addition, without the consent of the Holders of at least $66^{2}/_{3}$ % in principal amount of the Notes then outstanding, (a) no amendment to the Indenture, the Notes, the Note Guarantees or other Note Documents may release all or substantially all of the Collateral from the Liens securing the Notes and (b) no amendment to, or waiver of, the provisions of the Indenture, the Notes, the Note Guarantees or other Note Documents may alter the priority of the Liens securing the Collateral in any manner that adversely affects the rights of the Holders of the Notes, in each case other than in accordance with the terms of the applicable Note Documents.

The Issuer and the Trustee and the Noteholder Collateral Agent together, may amend or supplement the Indenture, the Notes, the Note Guarantees or any other Note Documents without notice to or consent of any Holder:

(i) to cure any ambiguity, defect or inconsistency;

(ii) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(iii) to provide for the assumption of the Issuer s obligations to the Noteholder Secured Parties in the case of a merger, consolidation or sale of all or substantially all of the assets, in accordance with Certain Covenants Limitations on Mergers, Consolidations, Etc.;

(iv) to release any Guarantor from any of its obligations under its Note Guarantee or the Indenture (to the extent permitted by the Indenture);

(v) to add any Subsidiary of the Issuer as a Guarantor;

(vi) to make any change that would provide additional rights or benefits to the Holders or would not materially adversely affect the rights of any Holder;

(vii) in the case of the Indenture, to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;

(viii) to add additional assets as Collateral or otherwise enter into additional or supplemental Security Documents;

(ix) to release Collateral from the Lien pursuant to the Indenture, the Security Documents and the Intercreditor Agreement when permitted or required by such agreements;

(x) to make, complete or confirm any grant of Collateral permitted or required by the Indenture or any of the Security Documents or to the extent required under the Intercreditor Agreement, to conform any Security Documents to reflect amendments or other modifications to comparable provisions under ABL Facility security documents; or

(xi) to amend the Intercreditor Agreement pursuant to Section 10.5 thereof or otherwise enter into an Intercreditor Agreement in respect of an ABL Facility permitted hereby.

Legal Defeasance and Covenant Defeasance

The Issuer may elect to have its obligations and the obligations of the Guarantors discharged with respect to the outstanding Notes, Note Guarantees and the Security Documents. Upon the Issuer s exercise of such option, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions set forth below, be deemed to have been discharged from their obligations with respect to all outstanding Notes, Note Guarantees and the Security Documents on the date the conditions set forth below are satisfied (hereinafter, **Legal Defeasance**). For this purpose, Legal Defeasance means that the Issuer and the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, the Note Guarantees, the Indenture and the Security Documents which shall thereafter be deemed to be outstanding only for the purposes of application of the trust money as set forth in the Indenture and the other sections of the Indenture referred to in (i) and (ii) below, and to have satisfied all its other obligations under such Notes and the Indenture and the Guarantors shall be deemed to have satisfied all of their obligations under the Note Guarantees, the Indenture and the Security Documents (and the Trustee and the Noteholder Collateral Agent, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged under the Indenture:

(i) The rights of Holders of outstanding Notes to receive, solely from the trust fund, and as more fully set forth in the Indenture, payments in respect of the principal of, premium, if any, and interest on such Notes when such payments are due;

(ii) The Issuer s obligations with respect to the Notes under certain provisions in the Indenture relating to the Notes and the covenant in the Indenture relating to the maintenance of office or agency;

(iii) The rights, powers, trusts, duties and immunities of the Trustee and Noteholder Collateral Agent under the Indenture and the Issuer s and Guarantors obligations in connection therewith; and

(iv) The Legal Defeasance provisions of the Indenture.

In addition, the Issuer may elect to have its obligations and the obligations of the Guarantors released with respect to most of the covenants under the Indenture and the Security Documents, and thereafter any omission to comply with such obligations shall not constitute an Event of Default. Upon the Issuer s exercise of such option, the Issuer and the Guarantors shall, subject to the satisfaction of the conditions described below, be released from their respective obligations under the covenants under the Indenture and the Security Documents, except as described otherwise in the Indenture (hereinafter, **Covenant Defeasance**), and the Notes shall thereafter be deemed not outstanding for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed outstanding for all other purposes under the Indenture (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuer and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere to any such covenant or by reason of any reference in any such covenant to any other provision in the Indenture or in any other document and such omission to comply shall not constitute an Event of Default, but, except as described above, the remainder of the Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuer s exercise of Covenant Defeasance, certain Events of Default will no longer apply.

In order to exercise either Legal Defeasance or Covenant Defeasance:

(i) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, U.S. Legal Tender, U.S. Government Obligations or a combination thereof, in such amounts as will be sufficient (without reinvestment), in the opinion of a nationally recognized firm of independent public accountants selected by the Issuer, to pay the principal of and interest on the

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Notes on the stated date for payment or on the Redemption Date of the principal or installment of principal of or interest on the Notes,

(ii) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel in the United States confirming that:

(1) the Issuer has received from, or there has been published by the Internal Revenue Service, a ruling, or

(2) since the date of the Indenture, there has been a change in the applicable United States federal income tax law,

in either case to the effect that, and based thereon this Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for United States federal income tax purposes as a result of such Legal Defeasance and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred,

(iii) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the Holders will not recognize income, gain or loss for United States federal income tax purposes as a result of such Covenant Defeasance and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the Covenant Defeasance had not occurred,

(iv) no Default shall have occurred and be continuing on the date of such deposit (other than a Default resulting from the borrowing of funds to be applied to such deposit),

(v) the Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a Default under the Indenture or a default under any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound (other than any such Default or default resulting solely from the borrowing of funds to be applied to such deposit),

(vi) the Issuer shall have delivered to the Trustee an Officers Certificate stating that the deposit was not made by it with the intent of preferring the Holders over any other of its creditors or with the intent of defeating, hindering, delaying or defrauding any other of its creditors or others, and

(vii) the Issuer shall have delivered to the Trustee an Officers Certificate and an Opinion of Counsel, each stating that the conditions provided for in, in the case of the Officers Certificate, clauses (i) through (vi) and, in the case of the Opinion of Counsel, clauses (ii) and/or (iii) and (v) of this paragraph have been complied with.

The Collateral will be released from the Lien securing the Notes, as provided under the caption Release of Collateral, upon a Legal Defeasance or Covenant Defeasance in accordance with the provisions described above.

Discharge of Indenture

The Issuer may terminate its obligations under the Notes, the Indenture and the Security Documents and the obligations of the Guarantors under the Note Guarantees, the Indenture and the Security Documents and the Indenture and the Security Documents shall cease to be of further effect (except for certain obligations regarding the registration of transfer or exchange of Notes, conversion, covenants regarding payment and maintenance of existence and other provisions specified in the Indenture, which shall survive until all of the Notes are no longer outstanding), if:

(i) all the Notes that have been authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from this trust) have been delivered to the Trustee for cancellation, or

(ii) (a) all Notes not delivered to the Trustee for cancellation otherwise have become due and payable, will become due and payable, or may be called for redemption, within one year and the Issuer has irrevocably deposited or caused to be deposited with the Trustee funds in trust sufficient to pay and discharge the entire Indebtedness (including all principal and accrued interest) on the Notes not theretofore delivered to the Trustee for cancellation,

(1) the Issuer has paid all sums then due and payable by it under the Indenture, and

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(2) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or on the Redemption Date, as the case may be.

In addition, the Issuer must deliver an Officers Certificate and an Opinion of Counsel stating that all conditions precedent to satisfaction and discharge have been complied with.

Calculations in Respect of Notes

Except as otherwise provided in the Indenture, the Issuer (or its agents) will be responsible for making all calculations called for under the Indenture or the Notes. The Issuer (or its agents) will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Issuer (or its agents) upon request will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of such calculations without independent verification. The Trustee will deliver a copy of such schedule to any Holder upon the written request of such Holder.

Trustee

U.S. Bank National Association is the Trustee and Noteholder Collateral Agent under the Indenture and has been appointed as the Registrar, Paying Agent and Conversion Agent.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of the Indenture or the Notes, it will not be accountable for the Issuer s use of the proceeds from the Notes, and it will not be responsible for any statement of the Issuer in the Indenture or any document issued in connection with the sale of Notes or any statement in the Notes other than the Trustee s certificate of authentication. The Trustee makes no representations with respect to the effectiveness or adequacy of the Indenture.

The Holders of not less than a majority in principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it, subject to certain exceptions. If a Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by the Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request, order or direction of any of the Holders pursuant to the provisions of the Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

Governing Law

The Indenture, the Notes, the Note Guarantees, the Indenture, the Security Documents, the Registration Rights Agreement and the Intercreditor Agreement are governed by and construed in accordance with the laws of the State of New York.

Certain Definitions

Set forth below is a summary of certain defined terms used in the Indenture. Reference is made to the Indenture and the other Note Documents for the full definition of all terms.

10-day VWAP means the average of the daily volume weighted average price of the Issuer s Common Stock on the national securities exchange or over-the-counter market (e.g., OTC Bulletin Board or Pink OTC Markets Inc.) on which the Common Stock is then listed or quoted for trading as reported by Bloomberg L.P. (based on the Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)) for the relevant 10 consecutive Trading Days when such formula is used.

ABL Collateral means ABL Priority Collateral as defined in the Intercreditor Agreement.

ABL Debt means all Indebtedness and letters of credit of the Issuer or any Subsidiary of the Issuer outstanding under any ABL Facility and all other Obligations under any ABL Facility (including interest accruing on or after the filing of any petition in

bankruptcy or for reorganization of the Issuer or any Subsidiary of the Issuer, regardless of whether or not a claim for post-filing interest is allowed in such proceedings).

ABL Facility means one or more debt facilities (including the Credit Agreement), indentures or commercial paper facilities or other agreements, in each case with banks or other lenders or investors providing for credit loans, notes, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, amended and restated, modified, supplemented, renewed, refunded, replaced, restructured or refinanced in whole or in part from time to time (including any agreement extending the maturity thereof or increasing the amount of available borrowings thereunder or adding additional borrowers or guarantors thereunder), whether by the same or any other agent, lender or group of lenders (or any affiliate of such agent, lender or group of lenders).

Acquired Indebtedness means (1) with respect to any Person that becomes a Restricted Subsidiary after the Issue Date, Indebtedness of such Person and its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary whether or not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary and (2) with respect to the Issuer or any Restricted Subsidiary, any Indebtedness of a Person (other than the Issuer or a Restricted Subsidiary) existing at the time such Person is merged with or into the Issuer or a Restricted Subsidiary, or Indebtedness expressly assumed by the Issuer or any Restricted Subsidiary in connection with the acquisition of an asset or assets from another Person, whether or not such Indebtedness was incurred by such other Person in connection with, or in contemplation of, such merger or acquisition.

Additional Interest has the meaning set forth in the Registration Rights Agreement.

Affiliate of any Person means any other Person which directly or indirectly controls or is controlled by, or is under direct or indirect common control with, the referent Person. For purposes of Certain Covenants Limitations on Transactions with Affiliates only, Affiliates shall be deemed to include, with respect to any Person, any other Person (1) which beneficially owns 10% or more of any class of the Voting Stock of the referent Person or (2) of which 10% or more of the Voting Stock is beneficially owned by the referenced Person. For purposes of this definition and the definition of Permitted Holder, **control** of a Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

Agent means any Registrar or Paying Agent.

amend means to amend, supplement, restate, amend and restate, renew , replace or otherwise modify; and **amendment** shall have a correlative meaning.

asset means any asset or property.

Asset Acquisition means

(1) An Investment by the Issuer or any Restricted Subsidiary of the Issuer in any other Person if, as a result of such Investment, such Person shall become a Restricted Subsidiary of the Issuer, or shall be merged with or into the Issuer or any Restricted Subsidiary of the Issuer, or

(2) The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of all or substantially all of the assets of any other Person or any division or line of business of any other Person.

Asset Sale means any sale, issuance, conveyance, transfer, lease, assignment or other disposition by the Issuer or any Restricted Subsidiary to any Person other than the Issuer or any Restricted Subsidiary (including by means of a sale and leaseback transaction or a merger or consolidation or sale of Equity Interests of any Restricted Subsidiary (other than directors qualify shares)) (collectively, for purposes of this definition, a **transfer**), in one transaction or a series of related transactions, of any assets of the Issuer or any of its Restricted Subsidiaries other than in the ordinary course of business. For purposes of this definition, the term Asset Sale shall not include:

(1) Transfers of cash or Cash Equivalents;

(2) Transfers of assets (including Equity Interests) that are governed by, and made in accordance with, Certain Covenants Limitations on Mergers, Consolidations, Etc. or any transfer that constitutes a Fundamental Change of Control under the Indenture;

(3) Permitted Investments and Restricted Payments permitted under Certain Covenants Limitations on Restricted Payments;

(4) The creation or realization of any Lien permitted under the Indenture;

(5) Transfers of surplus, damaged, worn-out or obsolete equipment or assets that, in the Issuer s reasonable judgment, are no longer used or useful in the business of the Issuer or its Restricted Subsidiaries;

(6) Sales or grants of licenses or sublicenses to use the patents, trade secrets, know-how and other intellectual property, and licenses, leases or subleases of other assets, of the Issuer or any Restricted Subsidiary to the extent not materially interfering with the business of the Issuer and the Restricted Subsidiaries;

(7) Any transfer or series of related transfers that, but for this clause, would be Asset Sales, if after giving effect to such transfers, the aggregate Fair Market Value of the assets transferred in such transaction or any such series of related transactions does not exceed $5.0 million;

(8) To the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of assets for like property (excluding any boot thereon) for use in a business similar to that of the Issuer or any Restricted Subsidiary; *provided*, that if any property that is so disposed is Collateral, the Issuer or the applicable Restricted Subsidiary will provide Liens on such exchanged for like property under and in accordance with the Indenture and the Security Documents;

(9) The unwinding of any Hedging Obligations;

(10) Any sale and leaseback transactions permitted by the Indenture;

(11) Any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(12) The lease or sublease of any real or personal property in the ordinary course of business;

(13) The transfer, sale or other disposition resulting from any condemnation or other taking of, any property or assets of the Issuer or any Restricted Subsidiary;

(14) Any sale or transfer of any interest in the Excluded Joint Venture; and

(15) Termination of leases and subleases.

Asset Sale Proceeds Account means one or more deposit accounts or securities accounts holding the proceeds of any sale or disposition of any Notes Collateral.

Attributable Debt means in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided, however*, that if such sale and leaseback transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of Capitalized Lease Obligations.

Bank Collateral Agent means JPMorgan Chase Bank, N.A. and any successor under the Credit Agreement, or if there is no Credit Agreement, the Collateral Agent designated pursuant to the terms of any ABL Facility.

Banking Services means each and any of the following bank services provided to the Issuer or any Subsidiary by any lender under an ABL Facility or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, commercial credit cards and purchasing cards), (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

Banking Services Obligations of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

Bankruptcy Law means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

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Board of Directors means, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the board of managers of such Person, (iii) in the case of any partnership, the Board of Directors of the general partner of such Person and (iv) in any other case, the functional equivalent of the foregoing or, in each case, other than for purposes of the definition of Fundamental Change of Control, any duly authorized committee of such body.

Business Day means a day other than a Saturday, Sunday or other day on which banking institutions in the City of New York are authorized or required by law to close.

Capital Stock means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting and in such Person s equity, entitling th