

Spectrum Brands Holdings, Inc.
Form 10-Q
May 09, 2013
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT
OF 1934

For the quarterly period ended March 31, 2013

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT
OF 1934

For the transition period from _____ to _____
Commission File Number 001-34757

Spectrum Brands Holdings, Inc.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	27-2166630 (I.R.S. Employer Identification Number)
---	--

601 Rayovac Drive Madison, Wisconsin (Address of principal executive offices)	53711 (Zip Code)
---	---------------------

(608) 275-3340
(Registrant's telephone number, including area code)

N/A
(Former name, former address and former fiscal year, if changed since last report.)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer	<input checked="" type="checkbox"/> Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> Smaller reporting company	<input type="checkbox"/>

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Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The number of shares outstanding of the Registrant's common stock, \$.01 par value, as of May 7, 2013, was 52,140,943.

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FOR QUARTER ENDED March 31, 2013
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

SPECTRUM BRANDS HOLDINGS, INC.

Condensed Consolidated Statements of Financial Position

March 31, 2013 and September 30, 2012

(Unaudited)

(Amounts in thousands, except per share figures)

	March 31, 2013	September 30, 2012
Assets		
Current assets:		
Cash and cash equivalents	\$77,478	\$ 157,961
Receivables:		
Trade accounts receivable, net of allowances of \$28,546 and \$21,870, respectively	479,999	335,301
Other	49,636	38,116
Inventories	705,409	452,633
Deferred income taxes	23,052	28,143
Prepaid expenses and other	160,121	49,273
Total current assets	1,495,695	1,061,427
Property, plant and equipment, net of accumulated depreciation of \$166,643 and \$139,994, respectively	316,312	214,017
Deferred charges and other	29,324	27,711
Goodwill	1,433,967	694,245
Intangible assets, net	2,170,652	1,714,929
Debt issuance costs	74,761	39,320
Total assets	\$5,520,711	\$3,751,649
Liabilities and Shareholders' Equity		
Current liabilities:		
Current maturities of long-term debt	\$29,451	\$ 16,414
Accounts payable	389,589	325,023
Accrued liabilities:		
Wages and benefits	58,466	82,119
Income taxes payable	27,896	30,272
Accrued interest	61,485	30,473
Other	141,265	126,330
Total current liabilities	708,152	610,631
Long-term debt, net of current maturities	3,229,424	1,652,886
Employee benefit obligations, net of current portion	99,588	89,994
Deferred income taxes	509,019	377,465
Other	32,390	31,578
Total liabilities	4,578,573	2,762,554
Commitments and contingencies		
Shareholders' equity:		
Common stock, \$.01 par value, authorized 200,000 shares; issued 53,411 and 52,799 shares, respectively; outstanding 52,095 and 51,483 shares	534	528
Additional paid-in capital	1,393,797	1,399,261
Accumulated deficit	(408,676) (340,647

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Accumulated other comprehensive loss	(50,208) (33,435)
	935,447	1,025,707	
Less treasury stock, at cost, 1,316 shares	(36,612) (36,612)
Total shareholders' equity	898,835	989,095	
Non-controlling interest	43,303	—	
Total equity	942,138	989,095	
Total liabilities and equity	\$5,520,711	\$3,751,649	

See accompanying notes which are an integral part of these condensed consolidated financial statements
(Unaudited).

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SPECTRUM BRANDS HOLDINGS, INC.

Condensed Consolidated Statements of Operations

For the three and six month periods ended March 31, 2013 and April 1, 2012

(Unaudited)

(Amounts in thousands, except per share figures)

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	2013	2012	2013	2012
Net sales	\$987,756	\$746,285	\$1,858,024	\$1,595,056
Cost of goods sold	662,253	484,594	1,243,279	1,044,734
Restructuring and related charges	2,599	1,660	3,685	6,265
Gross profit	322,904	260,031	611,060	544,057
Selling	171,022	129,912	299,783	261,671
General and administrative	70,428	56,547	127,158	107,163
Research and development	11,860	7,958	20,031	15,193
Acquisition and integration related charges	11,999	7,751	32,811	15,351
Restructuring and related charges	5,304	2,609	10,806	5,729
Total operating expenses	270,613	204,777	490,589	405,107
Operating income	52,291	55,254	120,471	138,950
Interest expense	60,355	69,273	130,242	110,396
Other expense (income), net	3,766	(2,192)	5,328	1
(Loss) income from continuing operations before income taxes	(11,830)	(11,827)	(15,099)	28,553
Income tax expense	29,146	16,833	39,759	44,143
Net loss	(40,976)	(28,660)	(54,858)	(15,590)
Less: Net income (loss) attributable to non-controlling interest	256	—	(187)	—
Net loss attributable to controlling interest	\$(41,232)	\$(28,660)	\$(54,671)	\$(15,590)
Basic earnings per share:				
Weighted average shares of common stock outstanding	52,082	51,512	51,920	51,831
Net loss per share attributable to controlling interest	\$(0.79)	\$(0.56)	\$(1.05)	\$(0.30)
Diluted earnings per share:				
Weighted average shares and equivalents outstanding	52,082	51,512	51,920	51,831
Net loss per share attributable to controlling interest	\$(0.79)	\$(0.56)	\$(1.05)	\$(0.30)
Cash dividends declared per common share	\$0.25	\$—	\$0.25	\$—

See accompanying notes which are an integral part of these condensed consolidated financial statements

(Unaudited).

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SPECTRUM BRANDS HOLDINGS, INC.

Condensed Consolidated Statements of Comprehensive Income (Loss)

For the three and six month periods ended March 31, 2013 and April 1, 2012

(Unaudited)

(Amounts in thousands)

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	2013	2012	2013	2012
Net loss	\$(40,976)	\$(28,660)	\$(54,858)	\$(15,590)
Other comprehensive income (loss), net of tax:				
Foreign currency translation	(20,423)	18,539	(17,555)	3,610
Unrealized gain (loss) on derivative instruments	832	(1,226)	1,078	895
Defined benefit pension (loss) gain	(150)	199	(296)	502
Other comprehensive income (loss), net of tax	(19,741)	17,512	(16,773)	5,007
Comprehensive loss	(60,717)	(11,148)	(71,631)	(10,583)
Less: Comprehensive income (loss) attributable to non-controlling interest	256	—	(187)	—
Comprehensive loss attributable to controlling interest	\$(60,973)	\$(11,148)	\$(71,444)	\$(10,583)

See accompanying notes which are an integral part of these condensed consolidated financial statements

(Unaudited).

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SPECTRUM BRANDS HOLDINGS, INC.

Condensed Consolidated Statements of Cash Flows

For the six month periods ended March 31, 2013 and April 1, 2012

(Unaudited)

(Amounts in thousands)

	SIX MONTHS ENDED	
	2013	2012
Cash flows from operating activities:		
Net loss	\$(54,858	) \$(15,590
Adjustments to reconcile net loss to net cash used by operating activities, net of effects of acquisitions:		
Depreciation	26,297	18,896
Amortization of intangibles	37,157	30,449
Amortization of unearned restricted stock compensation	14,759	11,281
Amortization of debt issuance costs	4,086	3,446
Non-cash increase to cost of goods sold from sale of HHI Business acquisition inventory	31,000	—
Write off unamortized discount / (premium) on retired debt	885	(466
Write off of debt issuance costs	4,600	2,563
Other non-cash adjustments	9,641	1,340
Net changes in assets and liabilities	(271,385	) (200,798
Net cash used by operating activities	(197,818	) (148,879
Cash flows from investing activities:		
Purchases of property, plant and equipment	(20,671	) (18,590
Acquisition of Shaser, net of cash acquired	(23,919) —
Acquisition of the HHI Business, net of cash acquired	(1,266,120) —
Acquisition of Black Flag	—	(43,750
Acquisition of FURminator, net of cash acquired	—	(139,390
Escrow payment - TLM Taiwan acquisition	(100,000) —
Other investing activities	32	(1,963
Net cash used by investing activities	(1,410,678	) (203,693
Cash flows from financing activities:		
Proceeds from issuance of Term Loan	792,000	—
Proceeds from issuance of 6.375% Notes	520,000	—
Proceeds from issuance of 6.625% Notes	570,000	—
Proceeds from issuance of 6.75% Notes	—	300,000
Payment of 12% Notes, including tender and call premium	—	(270,431
Proceeds from issuance of 9.5% Notes, including premium	—	217,000
Payment of senior credit facilities, excluding ABL revolving credit facility	(372,172	) (2,727
Debt issuance costs	(44,163	) (9,941
Other debt financing, net	4,125	11,866
Reduction of other debt	(1,486	) (1,371
ABL revolving credit facility, net	76,500	50,000
Cash dividends paid	(14,042) —
Treasury stock purchases	—	(30,836
Other financing activities	—	(954
Net cash provided by financing activities	1,530,762	262,606
	(1,836) —

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Effect of exchange rate changes on cash and cash equivalents due to Venezuela devaluation

Effect of exchange rate changes on cash and cash equivalents	(913	) (671)
Net decrease in cash and cash equivalents	(80,483	) (90,637)
Cash and cash equivalents, beginning of period	157,961	142,414	
Cash and cash equivalents, end of period	\$77,478	\$51,777	

See accompanying notes which are an integral part of these condensed consolidated financial statements (Unaudited).

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SPECTRUM BRANDS HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

(Amounts in thousands, except per share figures)

1 DESCRIPTION OF BUSINESS

Spectrum Brands Holdings, Inc., a Delaware corporation (“SB Holdings” or the “Company”), is a diversified global branded consumer products company. Spectrum Brands, Inc. (“Spectrum Brands”), is a wholly owned subsidiary of SB Holdings. SB Holdings' common stock trades on the New York Stock Exchange (the “NYSE”) under the symbol “SPB.” The Company’s operations include the worldwide manufacturing and marketing of alkaline, zinc carbon and hearing aid batteries, as well as aquariums and aquatic health supplies and the designing and marketing of rechargeable batteries, battery-powered lighting products, electric shavers and accessories, grooming products and hair care appliances. The Company’s operations also include the manufacturing and marketing of specialty pet supplies. The Company also manufactures and markets herbicides, insecticides and insect repellents in North America. The Company also designs, markets and distributes a broad range of branded small appliances and personal care products. The Company’s operations utilize manufacturing and product development facilities located in the United States (“U.S.”), Europe, Latin America and Asia.

On December 17, 2012, the Company acquired the residential hardware and home improvement business (the “HHI Business”) from Stanley Black & Decker, Inc. (“Stanley Black & Decker”), which includes (i) the equity interests of certain subsidiaries of Stanley Black & Decker engaged in the business and (ii) certain assets of Stanley Black & Decker used or held for use in connection with the business (the “Hardware Acquisition”). The HHI Business has a broad portfolio of recognized brand names, including Kwikset, Weiser, Baldwin, National Hardware, Stanley, FANAL and Pfister, as well as patented technologies such as Smartkey, a rekeyable lockset technology, and Smart Code Home Connect. On April 8, 2013, the Company completed the Hardware Acquisition, which included the acquisition of certain assets of Tong Lung Metal Industry Co. Ltd., a Taiwan Corporation (“TLM Taiwan”), which is involved in the production of residential locksets. For information pertaining to the Hardware Acquisition, see Note 15, “Acquisitions.”

The Company sells its products in approximately 140 countries through a variety of trade channels, including retailers, wholesalers and distributors, hearing aid professionals, industrial distributors and original equipment manufacturers and enjoys name recognition in its markets under the Rayovac, VARTA and Remington brands, each of which has been in existence for more than 80 years, and under the Tetra, 8-in-1, Dingo, Nature's Miracle, Spectracide, Cutter, Hot Shot, Black & Decker, George Foreman, Russell Hobbs, Farberware, Black Flag, FURminator, the previously mentioned HHI Business brands and various other brands.

The Company's global branded consumer products have positions in seven major product categories: consumer batteries; small appliances; pet supplies; electric shaving and grooming; electric personal care; home and garden controls; and hardware and home improvement, which consists of the recently acquired HHI Business.

The Company manages the businesses in four vertically integrated, product-focused reporting segments: (i) Global Batteries & Appliances, which consists of the Company's worldwide battery, electric shaving and grooming, electric personal care and small appliances primarily in the kitchen and home product categories (“Global Batteries & Appliances”); (ii) Global Pet Supplies, which consists of the Company's worldwide pet supplies business (“Global Pet Supplies”); (iii) Home and Garden Business, which consists of the Company's home and garden and insect control business (the “Home and Garden Business”); and (iv) Hardware & Home Improvement, which consists of the recently acquired HHI Business (“Hardware & Home Improvement”). Management reviews the performance of the Company based on these segments, which also reflect the manner in which the Company's management monitors performance and allocates resources. For information pertaining to our business segments, see Note 12, “Segment Results.”

2 SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation: The condensed consolidated financial statements include the accounts of SB Holdings and its subsidiaries and are prepared in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”). All

intercompany transactions have been eliminated.

These condensed consolidated financial statements have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") and, in the opinion of the Company, include all adjustments (which are normal and recurring in nature) necessary to present fairly the financial position of the Company at March 31, 2013, the results of operations for the three and six month periods ended March 31, 2013 and April 1, 2012, the

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SPECTRUM BRANDS HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited) – (Continued)

(Amounts in thousands, except per share figures)

comprehensive income (loss) for the three and six month periods ended March 31, 2013 and April 1, 2012 and the cash flows for the six month periods ended March 31, 2013 and April 1, 2012. Certain information and footnote disclosures normally included in consolidated financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such SEC rules and regulations. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2012.

Use of Estimates: The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Intangible Assets: Intangible assets are recorded at cost or at fair value if acquired in a purchase business combination. Customer relationships and proprietary technology intangibles are amortized, using the straight-line method, over their estimated useful lives. Excess of cost over fair value of net assets acquired (goodwill) and indefinite lived trade name intangibles are not amortized. Accounting Standards Codification ("ASC") Topic 350: "Intangibles-Goodwill and Other," requires that goodwill and indefinite-lived intangible assets be tested for impairment annually, or more often if an event or circumstance indicates that an impairment loss may have been incurred. Goodwill is tested for impairment at the reporting unit level, with such groupings being consistent with the Company's reportable segments. If an impairment is indicated, a write-down to fair value (normally measured by discounting estimated future cash flows) is recorded. Indefinite lived trade name intangibles are tested for impairment at least annually by comparing the fair value with the carrying value. Any excess of carrying value over fair value is recognized as an impairment loss in income from operations.

The Company's annual impairment testing is completed at the August financial period end. Management uses its judgment in assessing whether assets may have become impaired between annual impairment tests. Indicators such as unexpected adverse business conditions, economic factors, unanticipated technological change or competitive activities, loss of key personnel, and acts by governments and courts may signal that an asset has become impaired.

Shipping and Handling Costs: The Company incurred shipping and handling costs of \$66,031 and \$116,027 for the three and six month periods ended March 31, 2013, respectively, and \$49,266 and \$99,586 for the three and six month periods ended April 1, 2012, respectively. These costs are included in Selling expenses in the accompanying Condensed Consolidated Statements of Operations (Unaudited). Shipping and handling costs include costs incurred with third-party carriers to transport products to customers as well as salaries and overhead costs related to activities to prepare the Company's products for shipment from its distribution facilities.

Concentrations of Credit Risk: Trade receivables subject the Company to credit risk. Trade accounts receivable are carried at net realizable value. The Company extends credit to its customers based upon an evaluation of the customer's financial condition and credit history, and generally does not require collateral. The Company monitors its customers' credit and financial condition based on changing economic conditions and makes adjustments to credit policies as required. Provisions for losses on uncollectible trade receivables are determined based on ongoing evaluations of the Company's receivables, principally on the basis of historical collection experience and evaluations of the risks of nonpayment for a given customer.

The Company has a broad range of customers including many large retail outlet chains, one of which accounts for a significant percentage of its sales volume. This customer represented approximately 16% and 19% of the Company's Net sales during the three and six month periods ended March 31, 2013, respectively, and 21% and 23% of the Company's Net sales during the three and six month periods ended April 1, 2012, respectively. This customer also represented approximately 9% and 13% of the Company's Trade accounts receivable, net at March 31, 2013 and September 30, 2012, respectively.

Approximately 37% and 44% of the Company's Net sales during the three and six month periods ended March 31, 2013, respectively, and 42% and 46% of the Company's Net sales during the three and six month periods ended April 1, 2012, respectively, occurred outside the U.S. These sales and related receivables are subject to varying degrees of credit, currency, political and economic risk. The Company monitors these risks and makes appropriate provisions for collectibility based on an assessment of the risks present.

Stock-Based Compensation: The Company measures the cost of its stock-based compensation plans based on the fair value of its employee stock awards and recognizes these costs over the requisite service period of the awards.

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SPECTRUM BRANDS HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited) – (Continued)

(Amounts in thousands, except per share figures)

Total stock compensation expense associated with restricted stock awards and restricted stock units recognized by the Company during the three and six month periods ended March 31, 2013 was \$11,515 and \$14,759, respectively. Total stock compensation expense associated with restricted stock awards and restricted stock units recognized by the Company during the three and six month periods ended April 1, 2012 was \$6,897 and \$11,281, respectively.

The Company granted approximately 62 and 636 restricted stock units during the three and six month periods ended March 31, 2013, respectively. Of these grants, 22 restricted stock units are time-based and vest over a one year period. Of the remaining 614 restricted stock units, 90 are performance-based and vest over a one year period and 524 are performance and time-based and vest over a two year period. The total market value of the restricted stock units on the dates of the grants was approximately \$28,642.

The Company granted approximately 13 and 717 restricted stock units during the three and six month periods ended April 1, 2012, respectively. Of these grants, 18 restricted stock units are time-based and vest over a one year period. The remaining 699 restricted stock units are performance and time-based and vest over a two year period. The total market value of the restricted stock units on the dates of the grants was approximately \$19,280.

The fair value of restricted stock awards and restricted stock units is determined based on the market price of the Company's shares of common stock on the grant date. A summary of the activity in the Company's non-vested restricted stock units during the six months ended March 31, 2013 is as follows:

Restricted Stock Units	Shares	Weighted Average Grant Date Fair Value	Fair Value at Grant Date
Non-vested restricted stock units at September 30, 2012	1,931	\$28.45	\$54,931
Granted	636	45.03	28,642
Forfeited	(266	) 28.99	(7,712
Vested	(1,005	) 28.31	(28,449
Non-vested restricted stock units at March 31, 2013	1,296	\$36.58	\$47,412

At March 31, 2013 and September 30, 2012, the Company had 13 restricted stock awards outstanding with a weighted average grant date fair value of \$28.00 per share and a total fair value at grant date of \$364.

Acquisition and Integration Related Charges: Acquisition and integration related charges reflected in Operating expenses in the accompanying Condensed Consolidated Statements of Operations (Unaudited) include, but are not limited to, transaction costs such as banking, legal, accounting and other professional fees directly related to acquisitions, termination and related costs for transitional and certain other employees, integration related professional fees and other post business combination expenses associated with mergers and acquisitions.

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SPECTRUM BRANDS HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited) – (Continued)

(Amounts in thousands, except per share figures)

The following table summarizes acquisition and integration related charges incurred by the Company during the three and six month periods ended March 31, 2013 and April 1, 2012:

	Three Months Ended		Six Months Ended	
	2013	2012	2013	2012
Russell Hobbs				
Integration costs	\$880	\$2,785	\$1,935	\$5,193
Employee termination charges	152	1,907	259	2,516
Legal and professional fees	11	309	90	921
Russell Hobbs Acquisition and integration related charges	\$1,043	\$5,001	\$2,284	\$8,630
HHI Business				
Legal and professional fees	6,488	—	20,986	—
Integration costs	3,563	—	3,677	—
Employee termination charges	90	—	90	—
HHI Business Acquisition and integration related charges	\$10,141	\$—	\$24,753	\$—
Shaser	153	—	4,373	—
FURminator	562	2,114	1,233	4,599
Black Flag	11	532	39	1,817
Other	89	104	129	305
Total Acquisition and integration related charges	\$11,999	\$7,751	\$32,811	\$15,351

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SPECTRUM BRANDS HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited) – (Continued)

(Amounts in thousands, except per share figures)

3 COMPREHENSIVE INCOME (LOSS)

Comprehensive income (loss) includes foreign currency translation gains and losses on assets and liabilities of foreign subsidiaries, effects of exchange rate changes on intercompany balances of a long-term nature and transactions designated as a hedge of a net investment in a foreign subsidiary, deferred gains and losses on derivative financial instruments designated as cash flow hedges and amortization of deferred gains and losses associated with the Company's pension plans. The foreign currency translation gains and losses for the three and six month periods ended March 31, 2013 and April 1, 2012 were primarily attributable to the impact of translation of the net assets of the Company's European and Latin American operations, which primarily have functional currencies in Euros, Pounds Sterling and Brazilian Real.

For information pertaining to the reclassification of unrealized gains and losses on derivative instruments, see Note 8, "Derivative Financial Instruments."

The components of Other comprehensive income (loss), net of tax, for the three and six month periods ended March 31, 2013 and April 1, 2012 are as follows:

	Three Months Ended		Six Months Ended	
	2013	2012	2013	2012
Foreign Currency Translation Adjustments:				
Gross change before reclassification adjustment	\$ (20,423)	\$ 18,539	\$ (17,555)	\$ 3,610
Net reclassification adjustment for (gains) losses included in earnings	—	—	—	—
Gross change after reclassification adjustment	(20,423)	18,539	(17,555)	3,610
Deferred tax effect	—	—	—	—
Deferred tax valuation allowance	—	—	—	—
Other Comprehensive (Loss) Income	\$ (20,423)	\$ 18,539	\$ (17,555)	\$ 3,610
Unrealized Gains (Losses) on Derivative Instruments:				
Gross change before reclassification adjustment	\$ 1,498	\$ (3,232)	\$ 1,415	\$ (2,819)
Net reclassification adjustment for (gains) losses included in earnings	(16)	1,121	427	3,523
Gross change after reclassification adjustment	1,482	(2,111)	1,842	704
Deferred tax effect	(1,079)	1,410	(1,129)	413
Deferred tax valuation allowance	429	(525)	365	(222)
Other Comprehensive Income (Loss)	\$ 832	\$ (1,226)	\$ 1,078	\$ 895
Defined Benefit Pension Plans:				
Gross change before reclassification adjustment	\$ (901)	\$ (6)	\$ (1,590)	\$ 323
Net reclassification adjustment for losses included in Cost of goods sold	327	152	654	167
Net reclassification adjustment for losses included in Selling expenses	41	19	81	21
Net reclassification adjustment for losses included in General and administrative expenses	152	71	304	77
Gross change after reclassification adjustment	(381)	236	(551)	588
Deferred tax effect	219	(8)	243	(57)
Deferred tax valuation allowance	12	(29)	12	(29)

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Other Comprehensive (Loss) Income	\$(150) \$199	\$(296) \$502
Total Other Comprehensive (Loss) Income, net of tax	\$(19,741) \$17,512	\$(16,773) \$5,007

4NET LOSS PER COMMON SHARE

Net loss per common share of the Company for the three and six month periods ended March 31, 2013 and April 1, 2012 is calculated based upon the following number of shares:

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SPECTRUM BRANDS HOLDINGS, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited) – (Continued)

(Amounts in thousands, except per share figures)

	Three Months Ended		Six Months Ended	
	2013	2012	2013	2012
Basic	52,082	51,512	51,920	51,831
Effect of common stock equivalents	—	—	—	—
Diluted	52,082	51,512	51,920	51,831

For the three and six month periods ended March 31, 2013 and April 1, 2012, the Company has not assumed any dilution associated with outstanding common stock equivalents as the impact would be antidilutive due to the loss reported.

5 INVENTORIES

Inventories for the Company, which are stated at the lower of cost or market, consist of the following:

	March 31, 2013	September 30, 2012
Raw materials	\$112,106	\$58,515
Work-in-process	51,598	23,434
Finished goods	541,705	370,684
	\$705,409	\$452,633

6 GOODWILL AND INTANGIBLE ASSETS

Goodwill and intangible assets of the Company consist of the following:

	Global Batteries & Appliances	Hardware & Home Improvement	Global Pet Supplies	Home and Garden Business	Total
Goodwill:					
Balance at September 30, 2012	\$268,556	\$—	\$ 237,932	\$187,757	\$694,245
Additions	65,618	682,285	—	—	747,903
Effect of translation	(2,918)	(4,163)	(1,100)	—	(8,181)
Balance at March 31, 2013	\$331,256	\$678,122	\$ 236,832	\$187,757	\$1,433,967

Intangible Assets:

(unaudited)

(in thousands, except per share data)

Income Statement Data:								
Net sales	\$	490,106	\$658,714	\$850,120	\$	804,385	\$	736,335 \$323,432 \$492,382
Operating costs and expenses:								
Cost of sales		399,264	517,443	696,806		736,551	611,638	278,412 361,756
Selling, general and administrative expenses		49,660	89,450	97,639		93,505	86,085	38,535 49,214
Research and development		25,976	33,385	35,699		28,956	22,064	10,348 12,255
Restructuring charges		28,319	12,572	25,341		30,874	9,198	1,267 4,095

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Goodwill impairment				174,327				
Write down of long-lived assets	4,218			67,624	656			
Net (gain) loss on sales and disposals of assets	(2,917)	(1,214)	(702)	(25,505)	(1,003)	258	(1,435)	
Curtailement gains on benefit plans				(30,835)				
Total operating costs and expenses	500,302	651,636	859,001	1,075,497	728,638	328,820	425,885	
Operating income (loss)	(10,196)	7,078	(8,881)	(271,112)	7,697	(5,388)	66,497	
Other (income) expense:								
Interest income	(5,640)	(6,283)	(6,061)	(618)	(188)	(133)	(105)	
Interest expense and amortization of debt discount	6,628	9,865	21,696	29,789	26,008	12,310	14,792	
Increase in value of warrant					81,088	81,088		
Other (income) expense, net	916	(1,273)	(4,412)	(14,084)	4,121	5,511	(3,118)	
(Gain) loss on early extinguishment of debt				2,212	(38,921)	(38,921)	38,248	
Income (loss) before income taxes	(12,100)	4,769	(20,104)	(288,411)	(64,411)	(65,243)	16,680	
Income tax expense (benefit)	(12,475)	563	5,111	(3,202)	5,036	2,742	1,868	
Net income (loss)	\$ 375	\$ 4,206	\$ (25,215)	\$ (285,209)	\$ (69,447)	\$ (67,985)	\$ 14,812	
Net income (loss) per share(1):								
Basic	\$ 0.01	\$ 0.15	\$ (0.91)	\$ (10.62)	\$ (2.57)	\$ (2.52)	\$ 0.55	
Diluted(2)	0.01	0.15	(0.91)	(10.62)	(2.57)	(2.52)	0.29	

	As of March 31,				As of September 30,		
	2006	2007	2008	2009	2010	2009	2010
	(unaudited)						
	(in thousands)						
Balance Sheet Data(3):							
Cash and cash equivalents	\$ 163,778	\$ 212,202	\$ 81,383	\$ 39,204	\$ 79,199	\$ 57,412	\$ 117,454
Total assets	748,318	942,373	1,250,999	714,151	740,961	740,755	808,601
Total debt, net of discounts	100,000	215,931	377,741	306,746	249,509	258,715	274,282
Total stockholders' equity	512,703	577,419	576,831	240,039	284,272	294,643	304,705

- (1) Net income (loss) per share gives effect to the reverse stock split of our common stock on November 5, 2010 at a ratio equal to one-for-three.
- (2) Securities exercisable for common stock were not included in the computation of diluted loss per share in certain periods because the impact would have been antidilutive.
- (3) We did not pay dividends during any of these periods.

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DESCRIPTION OF OTHER INDEBTEDNESS

The following is a summary of certain of our indebtedness that is currently outstanding. The following descriptions do not purport to be complete and are qualified in their entirety by reference to the agreements and related documents referred to herein, copies of which, are filed as exhibits to the registration statement of which this prospectus forms a part.

Overview

As of September 30, 2010, we had a total of \$280.0 million of debt (including current portion) consisting of: (i) \$230.0 million par value of our Old Notes, (ii) \$40.6 million par value of our Convertible Notes and (iii) \$9.4 million of other indebtedness related to certain of our foreign subsidiaries. Set forth below is a description of our long-term debt other than the notes.

Convertible Notes

In November 2006, we sold and issued \$160.0 million in Convertible Notes to qualified institutional buyers pursuant to Rule 144A of the Securities Act. As of December 31, 2009, we had \$81.1 million of 2.25% Senior Convertible Notes outstanding. The Convertible Notes are unsecured obligations and rank equally with our existing and future unsubordinated and unsecured obligations and are junior to any of our future secured obligations to the extent of the value of the collateral securing such obligations. In connection with the issuance and sale of the Convertible Notes, we entered into an indenture dated as of November 1, 2006 with Wilmington Trust Company, as trustee.

In connection with the issuance of the Convertible Notes, we also granted the initial purchasers a 30-day option to purchase up to \$15.0 million aggregate principal amount of additional Convertible Notes. The initial purchasers exercised this option on November 9, 2006, thereby resulting in the sale of an additional \$15.0 million aggregate principal amount of the Convertible Notes on November 13, 2006, resulting in a total of \$175.0 million aggregate principal amount of Convertible Notes outstanding.

The Convertible Notes bear interest at a rate of 2.25% per annum, payable in cash semi-annually in arrears on each May 15 and November 15 beginning May 15, 2007. After May 15, 2026 and prior to maturity, a holder may surrender some or all of its notes for conversion. In addition, on or prior to May 15, 2026, a holder may surrender some or all of its notes for conversion upon satisfaction of certain conditions relating to the public trading price of our common stock, the delivery of a notice of redemption, the occurrence of certain corporate transactions or the occurrence of certain fundamental changes or changes in the value of the trading price of the notes. The Convertible Notes are convertible into (i) cash in an amount equal to the lesser of the principal amount of the Convertible Notes and the conversion value of the Convertible Notes on the conversion date and (ii) cash or shares of our common stock or a combination of cash and shares of the common stock, at our option, to the extent the conversion value at that time exceeds the principal amount of the Convertible Notes, in each case, at any time prior to the close of business on the business day immediately preceding the maturity date of the Convertible Notes, unless we have redeemed or purchased the Convertible Notes, subject to certain conditions. Giving effect to the Reverse Stock Split, the conversion rate was 34.364 shares of common stock per \$1,000 principal amount of the Convertible Notes, which represents a conversion price of approximately \$29.10 per share, subject to adjustments. The Convertible Notes are not currently convertible.

Holders of the Convertible Notes may require us to purchase any or all of their Convertible Notes on November 15, 2011, November 15, 2016 and November 15, 2021 at a purchase price equal to 100% of the principal thereof plus accrued and unpaid interest to, but excluding the date of purchase.

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We may redeem the Convertible Notes at any time on or after November 20, 2011 at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest to, but excluding the redemption date. On May 17, 2010, we consummated a tender offer to purchase \$40.5 million in aggregate principal amount of our Convertible Notes. We used \$37.9 million from the offering of Old Notes to extinguish the tendered notes. As of September 30, 2010, we had \$40.6 million of 2.25% Senior Convertible Notes outstanding.

Revolving Line of Credit

On September 30, 2010, KEMET Electronics Corporation ("KEC") and KEMET Electronics Marketing (S) Pte Ltd. ("KEMET Singapore") (each a "Borrower" and, collectively, the "Borrowers") entered into a Loan and Security Agreement (the "Loan and Security Agreement"), with Bank of America, N.A, as the administrative agent and the initial lender. The Loan and Security Agreement provides a \$50.0 million revolving line of credit, which is bifurcated into a U.S. facility (for which KEC is the Borrower) and a Singapore facility (for which KEMET Singapore is the Borrower). The size of the U.S. facility and Singapore facility can fluctuate as long as the Singapore facility does not exceed \$30.0 million and the total facility does not exceed \$50.0 million. A portion of the U.S. facility and of the Singapore facility can be used to issue letters of credit. The Revolving Credit Facility is available to be used for working capital and other general corporate purposes and is scheduled to expire on September 30, 2014.

Borrowings under the U.S. and Singapore facilities are subject to a borrowing base. The borrowing base consists of: in the case of the U.S. facility, (A) 85% of KEC's accounts receivable that satisfy certain eligibility criteria plus (B) the lesser of \$4 million and 40% of the net book value (on a first-in, first-out basis) of inventory of KEC that satisfies certain eligibility criteria plus (C) the lesser of \$3 million and 70% of the net orderly liquidation percentage of the appraised value of equipment that satisfies certain eligibility criteria less (D) certain reserves, including certain reserves imposed by the administrative agent in its permitted discretion; and in the case of the Singapore facility, (A) 85% of KEMET Singapore's accounts receivable that satisfy certain eligibility criteria less (B) certain reserves, including certain reserves imposed by the administrative agent in its permitted discretion.

Interest is payable on borrowings monthly at a rate equal to the London Interbank Offer Rate ("LIBOR") or the base rate, plus an applicable margin, as selected by the Borrower. Depending upon the fixed charge coverage ratio of us and all of our subsidiaries on a consolidated basis as of the latest test date, the applicable margin under the U.S. facility varies between 3.00% and 3.50% for LIBOR advances and 2.00% and 2.50% for base rate advances, and under the Singapore facility varies between 3.25% and 3.75% for LIBOR advances and 2.25% and 2.75% for base rate advances. The base rate is subject to a floor that is 100 basis points above LIBOR.

An unused line fee is payable monthly in an amount equal to 0.75% of the sum of the average daily unused portion of the facilities during any month; provided, that such percentage rate is reduced to (a) 0.50% per annum for any month in which the average daily balance of the facilities is greater than 33.3% of the total revolving commitment and less than 66.6% of the total revolving commitment, and (b) 0.375% per annum for any month in which the average daily balance of the facilities is greater than or equal to 66.6% of the total revolving commitment.

We and the direct and indirect domestic subsidiaries of KEC (collectively, the "Guarantors") guaranty the U.S. facility obligations and the U.S. facility obligations are secured by a lien on substantially all of the assets of KEC and the Guarantors (other than assets that secure the Exchange Notes). KEC and the Guarantors guaranty the Singapore facility obligations. In addition to the assets that secure the U.S. facility, the Singapore obligations are also secured by a pledge of 100% of the stock of KEMET Singapore and a charge on substantially all of KEMET Singapore's assets.

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The Revolving Credit Facility contains certain financial maintenance covenants, including the requirement that we maintain a fixed charge coverage ratio under certain circumstances. In addition to the financial covenants, the Revolving Credit Facility also contains limitations on the incurrence additional indebtedness, the granting of liens, capital expenditures, fundamental corporate changes, the sale of assets, the payment of dividends, prepayment of indebtedness and other limitations customary to secured credit facilities.

As of September 30, 2010, we had \$50.0 million in unused availability under the Revolving Credit Facility.

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EXCHANGE OFFER

Purpose and Effect of the Exchange Offer

We, the guarantors and the initial purchasers entered into a registration rights agreement in connection with the issuance of the Old Notes on May 5, 2010. Under the registration rights agreement, we and the guarantors have agreed to:

use commercially reasonable efforts to file a registration statement as soon as practicable after May 5, 2010, but in no event later than the date that is 210 days after May 5, 2010 (or if such 210th day is not a Business Day, the next succeeding Business Day) enabling holders of outstanding notes to exchange the privately placed Old Notes for publicly registered Exchange Notes with substantially identical terms;

use commercially reasonable efforts to cause the registration statement to be declared effective as promptly as possible; and

unless the Exchange Offer would not be permitted by applicable law or SEC policy, use commercially reasonable efforts to cause the Exchange Offer to be consummated on the earliest practicable date after the registration statement has become effective, but in no event later than 270 days after May 5, 2010 (or if such 270th day is not a Business Day, the next succeeding Business Day).

Under the registration rights agreement that we, the guarantors and the initial purchasers entered into in connection with the issuance of the Old Notes on May 5, 2010, we and the guarantors will cause a shelf registration statement to be filed, which may be an amendment to this registration statement, with the SEC on or prior to the later of (i) 210 days following May 5, 2010 (or if such 210th day is not a Business Day, the next succeeding Business Day) and (ii) 90 days after such filing obligation arises (or if such 90th day is not a Business Day, the next succeeding Business Day) and will use commercially reasonable efforts to cause such shelf registration statement to be declared effective by the SEC on or before the 180th day after such filing obligation arises (or if such 180th day is not a Business Day, the next succeeding Business Day) if:

the issuer and the guarantors are not required to file an Exchange Offer registration statement or permitted to consummate the Exchange Offer because the Exchange Offer is not permitted by applicable law or SEC policy; or

for any reason the Exchange Offer is not consummated within 270 days after May 5, 2010 (or if such 270th day is not a Business Day, the next succeeding Business Day); or

any holder of the Old Notes notifies the issuer prior to the 20th calendar day following the consummation of the Exchange Offer that:

it is prohibited by law or SEC policy from participating in the Exchange Offer;

it may not resell the Exchange Notes acquired by it in the Exchange Offer to the public without delivering a prospectus and the prospectus contained in the Exchange Offer registration statement is not appropriate or available for such resales; or

it is a broker-dealer and owns Old Notes acquired directly from the issuer or an affiliate of the issuer and the guarantors.

We and the guarantors will pay additional interest on the Old Notes for the periods described below if:

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we and the guarantors fail to file any of the registration statements required by the registration rights agreement on or prior to the date specified for such filing;

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any shelf registration statement required by the registration rights agreement is not declared effective by the SEC on or prior to the date specified for such effectiveness;

we and the guarantors fail to consummate the Exchange Offer within 270 days of May 5, 2010; or

any registration statement required by the registration rights agreement is filed declared effective but thereafter ceases to be effective or usable in connection with resales or exchanges, as applicable, of Old Notes during the periods specified in the registration rights agreement without being succeeded immediately by a post-effective amendment to such registration statement that cures such failure and that is itself immediately declared effective.

You will not have any remedy other than liquidated damages on the notes if we fail to meet the deadlines listed above, which we refer to as a registration default. When there is a registration default, the interest rate of the notes will increase by one-quarter of one percent per year for the first 90-day period. The interest rate (as so increased) will increase by an additional one-quarter of one percent each subsequent 90-day period until all registration defaults have been cured, up to an aggregate maximum increase in the interest rate equal to one percent (1%) per annum. Following the cure of all registration defaults, the accrual of additional interest will cease and the interest rate will revert to the original rate.

Resale of Exchange Notes

Based on interpretations of the SEC staff set forth in no-action letters issued to unrelated third parties, we believe that Exchange Notes issued in the Exchange Offer in exchange for Old Notes may be offered for resale, resold and otherwise transferred by any Exchange Note holder without compliance with the registration and prospectus delivery provisions of the Securities Act, if:

such holder is not an "affiliate" of ours within the meaning of Rule 405 under the Securities Act;

such Exchange Notes are acquired in the ordinary course of the holder's business; and

the holder does not intend to participate in the distribution of such Exchange Notes.

Any holder who tenders in the Exchange Offer with the intention of participating in any manner in a distribution of the Exchange Notes:

cannot rely on the position of the staff of the SEC set forth in "Exxon Capital Holdings Corporation" or similar interpretive letters; and

must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction.

If, as stated above, a holder cannot rely on the position of the staff of the SEC set forth in "Exxon Capital Holdings Corporation" or similar interpretive letters, any effective registration statement used in connection with a secondary resale transaction must contain the selling security holder information required by Item 507 of Regulation S-K under the Securities Act.

This prospectus may be used for an offer to resell, for the resale or for other retransfer of Exchange Notes only as specifically set forth in this prospectus. With regard to broker-dealers, only broker-dealers that acquired the Old Notes as a result of market-making activities or other trading activities may participate in the Exchange Offer. Each broker-dealer that receives Exchange Notes for its own account in exchange for Old Notes, where such Old Notes were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of the Exchange Notes.

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Please read the section captioned "Plan of Distribution" for more details regarding these procedures for the transfer of Exchange Notes. We have agreed to use commercially reasonable efforts to keep the registration statement of which this prospectus forms a part effective and to amend and supplement this prospectus in order to permit this prospectus to be lawfully delivered by all persons subject to the prospectus delivery requirements of the Securities Act for a period ending on the earlier of (1) 180 days from the date on which the registration statement of which this prospectus forms a part is declared effective and (2) the date on which broker-dealers are no longer required to deliver a prospectus in connection with market making or other trading activities. We have also agreed that we will make a sufficient number of copies of this prospectus available to broker-dealers promptly upon request at any time during such 180-day (or shorter as provided above) period in order to facilitate such resales.

Terms of the Exchange Offer

Upon the terms and subject to the conditions set forth in this prospectus, we will accept for exchange any Old Notes properly tendered and not withdrawn prior to the expiration date. We will issue a like principal amount of Exchange Notes in exchange for each \$2,000 principal amount of Old Notes surrendered under the Exchange Offer. We will issue \$1,000 integral multiple amount of Exchange Notes in exchange for each \$1,000 integral multiple amount of Old Notes surrendered under the Exchange Offer. Old Notes may be tendered only in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The form and terms of the Exchange Notes will be substantially identical to the form and terms of the Old Notes except the Exchange Notes will be registered under the Securities Act, will not bear legends restricting their transfer and will not provide for any additional interest upon our failure to fulfill our obligations under the registration rights agreement to file, and cause to become effective, a registration statement. The Exchange Notes will evidence the same debt as the Old Notes. The Exchange Notes will be issued under and entitled to the benefits of the same indenture that authorized the issuance of the outstanding Old Notes. Consequently, both series of notes will be treated as a single class of debt securities under the indenture.

The Exchange Offer is not conditioned upon any minimum aggregate principal amount of Old Notes being tendered for exchange.

As of the date of this prospectus, \$230,000,000 aggregate principal amount of the Old Notes are outstanding. There will be no fixed record date for determining registered holders of Old Notes entitled to participate in the Exchange Offer.

We intend to conduct the Exchange Offer in accordance with the provisions of the registration rights agreement, the applicable requirements of the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC. Old Notes that are not tendered for exchange in the Exchange Offer will remain outstanding and continue to accrue interest and will be entitled to the rights and benefits such holders have under the indenture relating to the Old Notes.

We will be deemed to have accepted for exchange properly tendered Old Notes when we have given oral notice (which is subsequently confirmed in writing) or written notice of the acceptance to the exchange agent. The exchange agent will act as agent for the tendering holders for the purposes of receiving the Exchange Notes from us and delivering Exchange Notes to such holders. Subject to the terms of the registration rights agreement, we expressly reserve the right to amend or terminate the Exchange Offer, and not to accept for exchange any Old Notes not previously accepted for exchange, upon the occurrence of any of the conditions specified below under the caption " Conditions to the Exchange Offer."

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By tendering your Old Notes, you will represent to us that, among other things:

any Exchange Notes that you receive will be acquired in the ordinary course of your business;

you are not engaging in or intending to engage in a distribution of the Exchange Notes and you have no arrangement or understanding with any person or entity, including any of our affiliates, to participate in the distribution of the Exchange Notes;

if you are a broker-dealer that will receive Exchange Notes for your own account in exchange for Old Notes that were acquired as a result of market-making activities, that you will deliver a prospectus, as required by law, in connection with any resale of the Exchange Notes; and

you are not our "affiliate" as defined in Rule 405 under the Securities Act.

Holders who tender Old Notes in the Exchange Offer will not be required to pay brokerage commissions or fees, or transfer taxes with respect to the exchange of Old Notes. We will pay all charges and expenses, other than those transfer taxes described below, in connection with the Exchange Offer. It is important that you read the section labeled " Fees and Expenses" below for more details regarding fees and expenses incurred in the Exchange Offer.

Expiration Date; Extensions; Amendments

The Exchange Offer for the Old Notes will expire at 5:00 p.m., New York City time, on _____, 2010, unless we extend it in our sole discretion.

In order to extend the Exchange Offer, we will notify the exchange agent orally or in writing of any extension. We will notify in writing or by public announcement the registered holders of Old Notes of the extension no later than 9:00 a.m., New York City time, on the business day after the previously scheduled expiration date.

We reserve the right, in our sole discretion:

to delay accepting for exchange any Old Notes in connection with the extension of the Exchange Offer;

to extend the Exchange Offer or to terminate the Exchange Offer and to refuse to accept Old Notes not previously accepted if any of the conditions set forth below under "Conditions" have not been satisfied, by giving oral or written notice of such delay, extension or termination to the exchange agent; or

subject to the terms of the registration rights agreement, to amend the terms of the Exchange Offer in any manner, provided that in the event of a material change in the Exchange Offer, including the waiver of a material condition, we will extend the Exchange Offer period, if necessary, so that at least five business days remain in the Exchange Offer following notice of the material change.

Any such delay in acceptance, extension, termination or amendment will be followed as promptly as practicable by written notice or public announcement thereof to the registered holders of Old Notes. If we amend the Exchange Offer in a manner that we determine to constitute a material change, we will promptly disclose such amendment in a manner reasonably calculated to inform the holders of Old Notes of such amendment, provided that in the event of a material change in the Exchange Offer, including the waiver of a material condition, we will extend the Exchange Offer period, if necessary, so that at least five business days remain in the Exchange Offer following notice of the material change. If we terminate this Exchange Offer as provided in this prospectus before accepting any Old Notes for exchange or if we amend the terms of this Exchange Offer in a manner

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that constitutes a fundamental change in the information set forth in the registration statement of which this prospectus forms a part, we will promptly file a post-effective amendment to the registration statement of which this prospectus forms a part. In addition, we will in all events comply with our obligation to make prompt delivery of Exchange Notes for all Old Notes properly tendered and accepted for exchange in the Exchange Offer.

Without limiting the manner in which we may choose to make public announcements of any delay in acceptance, extension, termination or amendment of the Exchange Offer, we shall have no obligation to publish, advertise, or otherwise communicate any such public announcement, other than by issuing a timely press release to a financial news service.

Conditions to the Exchange Offer

Despite any other term of the Exchange Offer, we will not be required to accept for exchange, or exchange any Exchange Notes for, any Old Notes, and we may terminate the Exchange Offer as provided in this prospectus before accepting any Old Notes for exchange if in our reasonable judgment:

the Exchange Offer, or the making of any exchange by a holder of Old Notes, would violate applicable law or any applicable interpretation of the staff of the SEC; or

any action or proceeding has been instituted or threatened in any court or by or before any governmental agency with respect to the Exchange Offer that, in our judgment, would reasonably be expected to impair our ability to proceed with the Exchange Offer.

In addition, we will not be obligated to accept for exchange the Old Notes of any holder that has not made:

the representations described under " Procedures for Tendering Old Notes" and "Plan of Distribution;" and

such other representations as may be reasonably necessary under applicable SEC rules, regulations or interpretations to make available to us an appropriate form for registration of the new notes under the Securities Act.

We expressly reserve the right, at any time or at various times on or prior to the scheduled expiration date of the Exchange Offer, to extend the period of time during which the Exchange Offer is open. Consequently, we may delay acceptance of any Old Notes by giving written notice of such extension to the registered holders of the Old Notes. During any such extensions, all Old Notes previously tendered will remain subject to the Exchange Offer, and we may accept them for exchange unless they have been previously withdrawn. We will return any Old Notes that we do not accept for exchange for any reason without expense to their tendering holder promptly after the expiration or termination of the Exchange Offer.

We expressly reserve the right to amend or terminate the Exchange Offer on or prior to the scheduled expiration date of the Exchange Offer, and to reject for exchange any Old Notes not previously accepted for exchange, upon the occurrence of any of the conditions to termination of the Exchange Offer specified above. We will give written notice or public announcement of any extension, amendment, non-acceptance or termination to the registered holders of the Old Notes as promptly as practicable. In the case of any extension, such notice will be issued no later than 9:00 a.m., New York City time on the business day after the previously scheduled expiration date.

These conditions are for our sole benefit and we may, in our sole discretion, assert them regardless of the circumstances that may give rise to them or waive them in whole or in part at any or at various times except that all conditions to the Exchange Offer must be satisfied or waived by us prior to acceptance of your notes. If we fail at any time to exercise any of the foregoing rights, that failure will not constitute a waiver of such right. Each such right will be deemed an ongoing right that

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we may assert at any time or at various times prior to the expiration of the Exchange Offer. Any waiver by us will be made by written notice or public announcement to the registered holders of the notes and any such waiver shall apply to all the registered holders of the notes.

In addition, we will not accept for exchange any Old Notes tendered, and will not issue Exchange Notes in exchange for any such Old Notes, if at such time any stop order is threatened or in effect with respect to the registration statement of which this prospectus constitutes a part or the qualification of the indenture under the Trust Indenture Act of 1939, as amended.

Procedures for Tendering Old Notes

Only a holder of Old Notes may tender such Old Notes in the Exchange Offer. If you are a DTC participant that has Old Notes which are credited to your DTC account by book-entry and which are held of record by DTC's nominee, as applicable, you may tender your Old Notes by book-entry transfer as if you were the record holder. Because of this, references herein to registered or record holders include DTC.

If you are not a DTC participant, you may tender your Old Notes by book-entry transfer by contacting your broker, dealer or other nominee or by opening an account with a DTC participant, as the case may be.

If you are DTC participant, to tender Old Notes in the Exchange Offer:

you must comply with DTC's Automated Tender Offer Program, or ATOP, procedures described below; and

the exchange agent must receive a timely confirmation of a book-entry transfer of the Old Notes into its account at DTC through ATOP pursuant to the procedure for book-entry transfer described below, along with a properly transmitted agent's message, before the expiration date.

Participants in DTC's ATOP program must electronically transmit their acceptance of the exchange by causing DTC to transfer the Old Notes to the exchange agent in accordance with DTC's ATOP procedures for transfer. DTC will then send an agent's message to the exchange agent. With respect to the exchange of the Old Notes, the term "agent's message" means a message transmitted by DTC, received by the exchange agent and forming part of the book-entry confirmation, which states that:

DTC has received an express acknowledgment from a participant in its ATOP that is tendering Old Notes that are the subject of the book-entry confirmation;

the participant has received and agrees to be bound by the terms and subject to the conditions set forth in this prospectus; and

we may enforce the agreement against such participant.

Delivery of an agent's message will also constitute an acknowledgment from the tendering DTC participant that the representations described above in " Terms of the Exchange Offer" are true and correct and when received by the exchange agent will form a part of a confirmation of book-entry transfer in which you acknowledge and agree to be bound by the terms of the letter of transmittal.

In addition, each broker-dealer that receives new notes for its own account in exchange for Old Notes, where such Old Notes were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Notes. See "Plan of Distribution."

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Guaranteed Delivery Procedures

If you desire to tender Old Notes pursuant to the Exchange Offer and (1) time will not permit your letter of transmittal and all other required documents to reach the exchange agent on or prior to the expiration date, or (2) the procedures for book-entry transfer (including delivery of an agent's message) cannot be completed on or prior to the expiration date, you may nevertheless tender such Old Notes with the effect that such tender will be deemed to have been received on or prior to the expiration date if all the following conditions are satisfied:

you must effect your tender through an "eligible guarantor institution;"

a properly completed and duly executed notice of guaranteed delivery, substantially in the form provided by us herewith, or an agent's message with respect to guaranteed delivery that is accepted by us, is received by the exchange agent on or prior to the expiration date as provided below; and

a book-entry confirmation of the transfer of such notes into the exchange agent account at DTC as described above, together with a letter of transmittal (or a manually signed facsimile of the letter of transmittal) properly completed and duly executed, with any signature guarantees and any other documents required by the letter of transmittal or a properly transmitted agent's message, are received by the exchange agent within three New York Stock Exchange, Inc. trading days after the date of execution of the notice of guaranteed delivery.

The notice of guaranteed delivery may be sent by hand delivery, facsimile transmission or mail to the exchange agent and must include a guarantee by an eligible guarantor institution in the form set forth in the notice of guaranteed delivery.

Withdrawal Rights

Except as otherwise provided in this prospectus, you may withdraw your tender of Old Notes at any time before 5:00 p.m., New York City time, on the expiration date.

To withdraw a tender of Old Notes in any Exchange Offer, the applicable exchange agent must receive a letter or facsimile notice of withdrawal at its address set forth below under " Exchange Agent" before the time indicated above. Any notice of withdrawal must:

specify the name of the person who deposited the Old Notes to be withdrawn;

identify the Old Notes to be withdrawn including the certificate number or numbers and aggregate principal amount of Old Notes to be withdrawn or, in the case of Old Notes transferred by book-entry transfer, the name and number of the account at DTC to be credited and otherwise comply with the procedures of the relevant book-entry transfer facility; and

specify the name in which the Old Notes being withdrawn are to be registered, if different from that of the person who deposited the notes.

We will determine in our sole discretion all questions as to the validity, form and eligibility, including time of receipt, of notices of withdrawal. Our determination will be final and binding on all parties. Any Old Notes withdrawn in this manner will be deemed not to have been validly tendered for purposes of the Exchange Offer. We will not issue Exchange Notes for such withdrawn Old Notes unless the Old Notes are validly retendered. We will return to you any Old Notes that you have tendered but that we have not accepted for exchange without cost as soon as practicable after withdrawal, rejection of tender or termination of the Exchange Offer. You may retender properly withdrawn Old Notes by following one of the procedures described above at any time before the expiration date.

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Exchange Agent

We have appointed Wilmington Trust Company as exchange agent for the Exchange Offer of Old Notes.

You should direct questions and requests for assistance and requests for additional copies of this prospectus to the exchange agent addressed as follows:

By Overnight Courier or Registered/Certified Mail
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890-1615
Attention: Sam Hamed

Telephone Inquiries:
(302) 636-6181

For facsimile transmission (for eligible institutions only):
(302) 636-4139, Attention: Exchanges

Fees and Expenses

We will bear the expenses of soliciting tenders. The principal solicitation is being made by mail; however, we may make additional solicitations by telephone or in person by our officers and regular employees and those of our affiliates.

We have not retained any dealer-manager in connection with the Exchange Offer and will not make any payments to broker-dealers or others soliciting acceptances of the Exchange Offer. We will, however, pay the exchange agent reasonable and customary fees for its services and reimburse it for its related reasonable out-of-pocket expenses.

Our expenses in connection with the Exchange Offer include:

SEC registration fees;

fees and expenses of the exchange agent and trustee;

accounting and legal fees;

printing costs; and

related fees and expenses.

Transfer Taxes

We will pay all of the transfer taxes, if any applicable to the exchange of Old Notes under the Exchange Offer. The tendering holder, however, will be required to pay any transfer taxes, whether imposed on the registered holder or any other person, if:

certificates representing Old Notes for principal amounts not tendered or accepted for exchange are to be delivered to, or are to be issued in the name of, any person other than the registered holder of Old Notes tendered; or

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a transfer tax is imposed for any reason other than the exchange of Old Notes under the Exchange Offer.

If satisfactory evidence of payment of such taxes is not submitted, the amount of such transfer taxes will be billed to that tendering holder.

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Consequences of Failure to Exchange

Holders of Old Notes who do not exchange their Old Notes for Exchange Notes under the Exchange Offer, including as a result of failing to timely deliver Old Notes to the exchange agent, together with all required documentation, will remain subject to the restrictions on transfer of such Old Notes:

as set forth in the legend printed on the Old Notes as a consequence of the issuance of the Old Notes pursuant to the exemptions from, or in transactions not subject to, the registration requirements of the Securities Act and applicable state securities laws; and

as otherwise set forth in the offering memorandum distributed in connection with the private offering of the Old Notes.

In addition, holders of Old Notes who do not exchange their Old Notes for Exchange Notes under the Exchange Offer will no longer have any registration rights or be entitled to liquidated damages under the registration rights agreement.

In general, you may not offer or sell the Old Notes unless they are registered under the Securities Act, or if the offer or sale is exempt from registration under the Securities Act and applicable state securities laws. Except as required by the registration rights agreement, we do not intend to register resales of the Old Notes under the Securities Act. Based on interpretations of the SEC staff, Exchange Notes issued pursuant to the Exchange Offer may be offered for resale, resold or otherwise transferred by their holders, other than any such holder that is our "affiliate" within the meaning of Rule 405 under the Securities Act, provided that the holders acquired the Exchange Notes in the ordinary course of the holders' business and the holders have no arrangement or understanding with respect to the distribution of the Exchange Notes to be acquired in the Exchange Offer. Any holder who tenders Old Notes in the Exchange Offer for the purpose of participating in a distribution of the Exchange Notes:

cannot rely on the applicable interpretations of the SEC; and

must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction.

After the Exchange Offer is consummated, if you continue to hold any Old Notes, you may have difficulty selling them because there will be fewer Old Notes outstanding.

Accounting Treatment

We will record the Exchange Notes in our accounting records at the same carrying value as the Old Notes, as reflected in our accounting records on the date of exchange. Accordingly, we will not recognize any gain or loss for accounting purposes in connection with the Exchange Offer.

Other

Participation in the Exchange Offer is voluntary, and you should carefully consider whether to accept. You are urged to consult your financial and tax advisors in making your own decision on what action to take.

We may in the future seek to acquire untendered Old Notes in the open market or privately negotiated transactions, through subsequent Exchange Offers or otherwise. We have no present plans to acquire any Old Notes that are not tendered in the Exchange Offer or to file a registration statement to permit resales of any untendered Old Notes.

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DESCRIPTION OF EXCHANGE NOTES

The Old Notes were, and the Exchange Notes will be, issued under an indenture, dated as of the Issue Date (the "*Indenture*") among KEMET Corporation, the Guarantors and Wilmington Trust Company, as trustee (the "*Trustee*"). Any Old Note that remains outstanding after the completion of the Exchange Offer, together with the Exchange Notes issued in connection with the Exchange Offer, will be treated as a single class of securities under the Indenture. For purposes of this section of this prospectus, references to the "Company" shall mean KEMET Corporation, without its Subsidiaries.

The terms of the Exchange Notes offered in exchange for the Old Notes will be substantially identical to the terms of the Old Notes, except that the Exchange Notes are registered under the Securities Act, and the transfer restrictions, registration rights and related additional interest terms applicable to the Old Notes (as described under "The Exchange Offer Purpose of the Exchange Offer") will not apply to the Exchange Notes. As a result, we refer to the Exchange Notes and the Old Notes collectively as "Notes" for purposes of the following summary.

The statements under this caption relating to the Indenture, the Notes and the Security Documents are summaries and are not a complete description thereof, and where reference is made to particular provisions, such provisions, including the definitions of certain terms, are qualified in their entirety by reference to all of the provisions of the Indenture, the Notes and the Security Documents and those terms made part of the Indenture by the Trust Indenture Act. The definitions of certain capitalized terms used in the following summary are set forth under the caption " Certain Definitions." Copies of the Indenture and the Security Documents are available upon request from the Company. We urge you to read those documents carefully because they, and not the following description, govern your rights as a Holder.

General

The Notes will mature on May 1, 2018. The Company has issued \$230,000,000 in aggregate principal amount of 10¹/₂% senior notes due 2018 ("*Notes*"). The Company may issue additional notes (the "*Additional Notes*") under the Indenture, subject to the limitations of the covenants described under the captions " Certain Covenants Limitation on Incurrence of Debt and " Certain Covenants Limitation on Liens." The Notes and any Additional Notes subsequently issued under the Indenture would be treated as a single class for all purposes of the Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase, and except as otherwise specified herein, all references to the "Notes" include any Additional Notes. Any Additional Notes will be secured, equally and ratably with the Notes, by the Liens on the Collateral described under the caption " Security."

Interest on the Notes will be payable at a rate of 10.50% per annum. Interest on the Notes will be payable semi-annually in cash in arrears on May 1 and November 1 of each year, commencing on November 1, 2010. The Company will make each interest payment to the Holders of record of the Notes on the immediately preceding April 15 and October 15. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including the Issue Date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. Principal of and premium, if any, and interest on the Notes will be payable, and the Notes will be exchangeable and transferable, at the office or agency of the Company maintained for such purposes, which, initially, will be the corporate trust office of the Trustee or an agent thereof; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the Person entitled thereto as shown on the security register. The Notes will be issued only in fully registered form without coupons, in denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof. No service charge will be made for any registration of transfer, exchange or

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redemption of Notes, except in certain circumstances for any tax or other governmental charge that may be imposed in connection therewith.

Note Guarantees

The Notes will be guaranteed (the "*Note Guarantees*"), on a joint and several basis, by the Guarantors. On the Issue Date, each of the Company's existing domestic Subsidiaries, other than certain Subsidiaries that are in the process of being dissolved, will be a Guarantor. The obligations of a Guarantor under its Note Guarantee will be limited to the maximum amount as will result in the obligations of such Guarantor under the Note Guarantee not to be deemed to constitute a fraudulent conveyance or fraudulent transfer under federal or state law. The Note Guarantees will be secured by Liens on the Collateral described under the caption " Security."

As of the date of the Indenture, all of the Company's Subsidiaries, other than certain Subsidiaries that are in the process of being dissolved, will be "Restricted Subsidiaries." However, under the circumstances described under the caption " Certain Covenants Limitation on Creation of Unrestricted Subsidiaries," any of the Company's Subsidiaries may be designated as "Unrestricted Subsidiaries." Unrestricted Subsidiaries will not be subject to many of the restrictive covenants in the Indenture and will not guarantee the Notes. Claims of creditors of non-Guarantor Subsidiaries, including trade creditors, secured creditors and creditors holding debt and guarantees issued by those Subsidiaries, and claims of preferred stockholders (if any) of those Subsidiaries generally will have priority with respect to the assets and earnings of those Subsidiaries over the claims of creditors of the Company and the Guarantors, including Holders.

The Indenture provides that, subject to the provisions of the following paragraph, no Guarantor may consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing; and

(2) either:

(A) such Guarantor will be the surviving or continuing Person; or

(B) the Person formed by or surviving any such consolidation or merger is another Guarantor or assumes all the obligations of such Guarantor under the Note Guarantee of such Guarantor, the Indenture, the Security Documents and the Registration Rights Agreement; and

(3) the Company delivers, or causes to be delivered, to the Trustee an Officers' Certificate and an opinion of counsel, each stating that such consolidation, assumption or merger complies with the requirements of the Indenture.

The Indenture provides that in connection with (i) any sale of all of the Capital Interests of a Guarantor by the Company or any Subsidiary of the Company to a Person that is not (either before or after giving effect to such transaction) a Restricted Subsidiary or (ii) any sale or other disposition by the Company or any Subsidiary of the Company of all or substantially all of the assets of a Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) a Restricted Subsidiary, then in each case such Guarantor (or the Person concurrently acquiring such assets of such Guarantor) shall be released and relieved of any obligations under its Note Guarantee and any liens granted thereby in support thereof; *provided* that (A) the Net Cash Proceeds of such sale or other disposition are applied in accordance with the covenant described under the caption " Certain Covenants Limitation on Asset Sales" and (B) the Company delivers to the Trustee an Officers' Certificate and an opinion of counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of the Indenture, including

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without limitation the covenant described under the caption " Certain Covenants Limitation on Asset Sales." The Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

Not all of the Company's Subsidiaries will guarantee the Notes. The Company's non-Guarantor Subsidiaries accounted for approximately 29% of the total assets and 32% of the total liabilities of the Company and its Subsidiaries as of September 30, 2010.

Ranking

Ranking of the Notes

The Notes will be senior secured obligations of the Company. As a result, the Notes:

will rank equally in right of payment with all of the Company's existing and future indebtedness that is not by its terms expressly subordinated in right of payment to the Notes;

will rank senior in right of payment to all of the Company's existing and future indebtedness that is by its terms expressly subordinated in right of payment to the Notes;

will be effectively subordinated in right of payment to all of the Company's existing and future secured indebtedness that is secured by assets that are not part of the Collateral securing the Notes, to the extent of the assets securing such indebtedness; and

will be structurally subordinated in right of payment to all existing and future indebtedness and other liabilities of any Subsidiary of the Company that is not a Guarantor.

The Notes will be secured by first-priority Security Interests in the Collateral (subject as to priority and otherwise, in each case, to certain exceptions and permitted liens).

As of September 30, 2010, the Company and its Subsidiaries had approximately \$280.0 million of total indebtedness outstanding (including the Notes), of which approximately \$8.1 million was indebtedness of non-Guarantor Subsidiaries of the Company. The Company's and each Guarantor's "first-tier" directly owned Foreign Restricted Subsidiaries that are organized in Mexico, Singapore or Italy accounted for approximately 14% of the total assets and liabilities of the Company and its Subsidiaries as of September 30, 2010.

Ranking of the Note Guarantees

Each Note Guarantee is a senior secured obligation of the applicable Guarantor. Each Note Guarantee:

will rank senior in right of payment to all existing and future indebtedness of the applicable Guarantor that is by its terms expressly subordinated in right of payment to such Note Guarantee;

will rank equally in right of payment with all existing and future indebtedness of the applicable Guarantor that is not by its terms expressly subordinated in right of payment to such Note Guarantee;

will be effectively subordinated in right of payment to all existing and future secured indebtedness of the applicable Guarantor that is secured by assets that are not part of the Collateral securing such Note Guarantee, to the extent of the assets securing such indebtedness; and

will be structurally subordinated in right of payment to all existing and future indebtedness and other liabilities of any Subsidiary of the applicable Guarantor that is not also a Guarantor.

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Sinking Fund

There are no mandatory sinking fund payment obligations with respect to the Notes.

Security

The obligations of the Company with respect to the Notes, the obligations of the Guarantors under the Note Guarantees, and the performance of all other obligations of the Company and the Guarantors under or relating to the Senior Note Documents will be secured equally and ratably by first-priority Security Interests in the following assets (the "*Collateral*"):

51% of the total outstanding Capital Interests (including, without limitation, joint venture interests) of each of the Company's "first-tier" Foreign Restricted Subsidiaries that is owned directly by the Company and/or a Guarantor and is organized in Italy, Mexico or Singapore;

all Trust Monies, if any; and

all proceeds and products of any and all of the foregoing.

The Collateral will be pledged pursuant to the Pledge Agreement and the Foreign Law Security Documents or other grants or transfers for security executed and delivered by the Company or the applicable Guarantor to the Collateral Agent, creating a Lien under the Security Documents upon property owned or to be acquired by the Company or the applicable Guarantor in favor of the Collateral Agent for the benefit of the Trustee and the Holders.

So long as no Event of Default shall have occurred and be continuing, and subject to certain terms and conditions, the Company and the Guarantors are entitled to exercise any voting and other consensual rights pertaining to all Capital Interests pledged pursuant to the Security Documents and to remain in possession and retain exclusive control over the Collateral (other than Trust Monies and Collateral comprised of certificated Capital Interests or as otherwise set forth in the Indenture or the Security Documents), to alter the Collateral and to collect, invest and dispose of any income thereon. Upon the occurrence and during the continuance of an Event of Default, to the extent permitted by law and subject to the provisions of the Security Documents:

(1) all of the rights of the Company and the Guarantors to exercise voting or other consensual rights with respect to all Capital Interests included in the Collateral shall cease, and all such rights shall become vested in the Collateral Agent, which, to the extent permitted by law, shall have the sole right to exercise such voting and other consensual rights; and

(2) the Collateral Agent may take possession of and sell the Collateral or any part thereof in accordance with the terms of the Security Documents.

In the case of an Event of Default, the Collateral Agent will only be permitted, subject to applicable law, to exercise remedies and sell the Collateral under the Security Documents at the direction of the Trustee. The proceeds from the sale of the Collateral will be applied first, to pay the expenses of the exercise of such remedies and fees and other amounts then payable to the Collateral Agent and the Trustee under the Indenture and the Security Documents and thereafter, to pay the principal of, premium, if any, and accrued interest on the Notes on a pro rata basis. The proceeds of any sale of the Collateral following an Event of Default may not be sufficient to satisfy in full the Company's obligations under the Notes. See "Risk Factors Risks Related to the Exchange Notes The value of the collateral securing the notes may not be sufficient to satisfy our obligations under the notes."

The Indenture and the Security Documents will require that the Company and the Guarantors grant to the Collateral Agent, for the benefit of the Trustee and the Holders, a first-priority lien on all property acquired after the Issue Date of the kinds described above as Collateral. In addition, any

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future Domestic Restricted Subsidiaries (other than Immaterial Subsidiaries) will be required to become Guarantors and similarly grant liens on their property of the kinds described above as Collateral to the Collateral Agent, for the benefit of the Trustee and the Holders.

Use and Release of Collateral

Unless an Event of Default shall have occurred and be continuing, the Company will have the right to remain in possession and retain exclusive control of the Collateral (other than Trust Monies and Collateral comprised of certificated Capital Interests or as otherwise set forth in the Indenture or the Security Documents), to alter the Collateral and to collect, invest and dispose of any income thereon.

Release of Collateral

The Indenture and the Security Documents provide that the Liens securing the Notes will, upon compliance with the condition that the Company or the applicable Guarantor satisfies certain conditions set forth in the Indenture and delivers to the Trustee all documents required by the Trust Indenture Act, automatically and without the need for any further action by any Person be released so long as such release is in compliance with the Trust Indenture Act:

- (1) in whole or in part, as applicable, as to all or any portion of property subject to such Liens which has been taken by eminent domain, condemnation or other similar circumstances;
- (2) in whole, as to all property subject to such Liens, upon:
 - (a) payment in full of the principal of, accrued and unpaid interest and premium on the Notes; or
 - (b) satisfaction and discharge of the Indenture as set forth under the caption " Satisfaction and Discharge of the Indenture; Defeasance;" or
 - (c) legal defeasance or covenant defeasance of the Indenture as set forth under the caption " Satisfaction and Discharge of the Indenture; Defeasance;"
- (3) in part, as to any property that (a) is sold, transferred or otherwise disposed of by the Company or a Restricted Subsidiary in a transaction not prohibited by the Indenture or the relevant Security Documents, at the time of such sale, transfer or disposition, to the extent of the interest sold, transferred or disposed of or (b) is owned or at any time acquired by a Guarantor that has been released from its Note Guarantee, concurrently with the release of such Note Guarantee;
- (4) pursuant to any amendment to, or waiver of, the provisions of the Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Note Liens, with the consent of the Holders of at least 66²/₃% in aggregate principal amount of the Notes then outstanding; or
- (5) in part, in accordance with the applicable provisions of the Security Documents.

If any Collateral is released in accordance with any of the Security Documents (other than as permitted by the Indenture) and if the Company or the applicable Guarantor has delivered the certificates and documents required by the Security Documents, the Trustee will determine whether it has received all documentation required by Section 314(d) of the Trust Indenture Act (to the extent applicable) in connection with such release.

The Capital Interests of any Subsidiary of the Company will constitute Collateral securing the Notes and the related Note Guarantees only to the extent that such Capital Interests can secure such Notes and Note Guarantees without Rule 3-16 of Regulation S-X (or any other law, rule or regulation) requiring separate financial statements of such Subsidiary to be filed with the Commission (or any

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other governmental agency). In the event that Rule 3-16 of Regulation S-X requires or is amended, modified or interpreted by the Commission to require (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, which would require) the filing with the Commission (or any other governmental agency) of separate financial statements of any such Subsidiary due to the fact that such Subsidiary's Capital Interests secure the Notes and the related Note Guarantees, then such Capital Interests shall automatically be deemed not to be part of the Collateral securing the Notes and Note Guarantees (but only to the extent necessary to not be subject to such requirement). In such event, the Security Documents may be amended or modified, without the consent of any Holder, to the extent necessary to release the security interests on the Capital Interests that are so deemed to no longer constitute part of the Collateral.

In the event that Rule 3-16 of Regulation S-X is amended, modified or interpreted by the Commission to permit (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, which would permit) such Subsidiary's Capital Interests to secure the Notes and the related Note Guarantees in excess of the amount then pledged without the filing with the Commission (or any other governmental agency) of separate financial statements of such Subsidiary, then the Capital Interests of such Subsidiary shall automatically be deemed to be a part of the Collateral securing the Notes and Note Guarantees (but only to the extent such Subsidiary would not be subject to any such financial statement requirement). In such event, the Security Documents may be amended or modified, without the consent of any Holder, to the extent necessary to subject to the Liens under the Security Documents such additional Capital Interests.

In accordance with the limitations set forth in the two immediately preceding paragraphs, as of the date the Company files a registration statement with the Commission relating to the Notes, the Collateral securing the Notes and the related Note Guarantees will include Capital Interests of any Subsidiaries of the Company only to the extent that the applicable value of such Capital Interests (on an entity-by-entity basis) is less than 20% of the aggregate principal amount of the Notes outstanding. The applicable value of the Capital Interests of any entity is deemed to be the greatest of its par value, book value or market value. None of the par value, book value or market value of the Capital Interests of any of the Foreign Restricted Subsidiaries pledged as Collateral securing the Notes and the related Note Guarantees currently exceeds 20% of the aggregate principal amount of the Notes. However, the portion of the Capital Interests of such Subsidiaries constituting Collateral securing the Notes and the related Note Guarantees may decrease or increase as the value of such Capital Interests changes as described above (but not, for the avoidance of doubt, above the maximum percentage of such Capital Interests required to be pledged as Collateral). See "Risk Factors Risks Related to the Exchange Notes Upon completion of the Exchange Offer, the ability of the collateral agent to realize upon the capital stock securing the notes will be automatically limited to the extent the pledge of such capital stock would require the filing with the SEC of separate financial statements for any of the Company's subsidiaries."

Use of Trust Monies

All Trust Monies shall be held by the Trustee as a part of the Collateral securing the Notes and, so long as no Event of Default shall have occurred and be continuing, may, subject to certain conditions set forth in the Indenture, at the direction of the Company be applied by the Trustee from time to time to the payment of the principal of, premium, if any, and interest on any Notes at maturity or upon redemption or retirement, or to the purchase of Notes upon tender or in the open market or otherwise, in each case in compliance with the Indenture.

Certain bankruptcy limitations

The right of the Trustee 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

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were to be commenced by or against the Company or the Guarantors prior to the Trustee 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 Collateral Agent could repossess or dispose of the Collateral, or 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."

Furthermore, in the event a bankruptcy court determines the value of the Collateral is not sufficient to repay all amounts due on the Notes, the holders of the Notes would hold secured claims to the extent of the value of the Collateral, and would hold unsecured claims with respect to any shortfall. Applicable federal bankruptcy laws do not permit the payment and/or accrual of post-petition interest, costs and attorneys' fees during a debtor's bankruptcy case unless the claims are over-secured or the debtor is solvent at the time of reorganization. In addition, if the Company or the Guarantors were to become the subject of a bankruptcy case, the bankruptcy court, among other things, may avoid certain pre-petition transfers made by the entity that is the subject of the bankruptcy filing, including, without limitation, transfers held to be preferences or fraudulent conveyances.

Optional Redemption

The Notes may be redeemed, in whole or in part, at any time prior to May 1, 2014, at the option of the Company upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to each Holder's registered address, at a Redemption Price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date).

In addition, the Notes are subject to redemption, at the option of the Company, in whole or in part, at any time on or after May 1, 2014, upon not less than 30 nor more than 60 days' notice at the Redemption Prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but not including, the redemption date (subject to the right of Holders of record on the relevant regular record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on May 1 of the years indicated.

Year	Redemption Price
2014	105.250%
2015	102.625%
2016 and thereafter	100.000%

Prior to May 1, 2013, the Company may, with the net proceeds of one or more Qualified Equity Offerings, redeem, on one or more occasions, in whole or in part, up to 35% of the aggregate principal amount of the outstanding Notes (including Additional Notes) at a Redemption Price equal to 110.500% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to, but not including, the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided* that at least 65% of the principal amount of Notes then outstanding (including Additional Notes) remains outstanding

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immediately after the occurrence of any such redemption (excluding Notes held by the Company or its Subsidiaries) and that any such redemption occurs within 90 days following the date of the closing of any such Qualified Equity Offering.

If less than all of the Notes are to be redeemed, the Trustee will select the Notes or portions thereof to be redeemed by lot, pro rata or by any other method the Trustee shall deem fair and appropriate (subject to the procedures of The Depository Trust Company).

No Notes of \$2,000 or less shall be redeemed in part. Notices of redemption shall be mailed by first class mail (and, to the extent permitted by applicable procedures or regulations, electronically) at least 30 days before the redemption date to each Holder to be redeemed at its registered address. If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Notes or portions of them called for redemption.

The Company may at any time, and from time to time, purchase Notes in the open market or otherwise, subject to compliance with applicable securities laws.

Change of Control

Upon the occurrence of a Change of Control Triggering Event, the Company will make an Offer to Purchase all of the outstanding Notes at a Purchase Price in cash equal to 101% of the principal amount tendered, together with accrued interest, if any, to but not including the Purchase Date. For purposes of the foregoing, an Offer to Purchase shall be deemed to have been made if (i) within 30 days following the date of the occurrence of any Change of Control Triggering Event, the Company commences an Offer to Purchase all outstanding Notes at the Purchase Price (*provided* that the running of such 30-day period shall be suspended, for up to a maximum of 30 days, during any period when the commencement of such Offer to Purchase is delayed or suspended by reason of any court's or governmental authority's review of or ruling on any materials being employed by the Company to effect such Offer to Purchase, so long as the Company has used and continues to use its commercially reasonable efforts to make and conclude such Offer to Purchase promptly) and (ii) all Notes properly tendered pursuant to the Offer to Purchase are purchased on the terms of such Offer to Purchase.

The phrase "all or substantially all," as used in the definition of "Change of Control," has not been interpreted under New York law (which is the governing law of the Indenture) to represent a specific quantitative test. As a consequence, in the event the Holders elected to exercise their rights under the Indenture and the Company elects to contest such election, there could be no assurance how a court interpreting New York law would interpret such phrase. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder may require the Company to make an Offer to Purchase the Notes as described above.

The provisions of the Indenture may not afford Holders protection in the event of a highly leveraged transaction, reorganization, restructuring, merger or similar transaction affecting the Company that may adversely affect Holders, if such transaction is not the type of transaction included within the definition of "Change of Control." A transaction involving the management of the Company or its Affiliates, or a transaction involving a recapitalization of the Company, will result in a Change of Control only if it is the type of transaction specified in such definition. The definition of "Change of Control" may be amended or modified with the written consent of a majority in aggregate principal amount of outstanding Notes. See " Amendment, Supplement and Waiver."

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The Company will be required to comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws or regulations in connection with any Offer to Purchase as described above. To the extent that any applicable securities laws or regulations conflict with the Change of Control provisions of the Indenture, the Company will comply with such laws and regulations, and no Default or Event of Default shall be deemed to have occurred as a result of such compliance.

The Company will not be required to make an Offer to Purchase upon a Change of Control Triggering Event if (i) a third party makes such Offer to Purchase contemporaneously with or upon a Change of Control Triggering Event in the manner, at the times and otherwise in compliance with the requirements of the Indenture and purchases all Notes validly tendered and not withdrawn under such Offer to Purchase or (ii) a notice of redemption has been given pursuant to the Indenture as described under the caption " Optional Redemption."

The Company's ability to pay cash to Holders upon a Change of Control Triggering Event may be limited by the Company's then existing financial resources. Further, the agreements governing the Company's other Debt contain, and future agreements of the Company may contain, prohibitions of certain events, including events that would constitute a Change of Control. If the exercise by Holders of their right to require the Company to repurchase the Notes upon a Change of Control Triggering Event occurred at the same time as a change of control event under one or more of the Company's other debt agreements, the Company's ability to pay cash to the Holders upon a repurchase may be further limited by the Company's then existing financial resources. See "Risk Factors Risks Related to the Exchange Notes We may not be able to repurchase the notes upon a change of control triggering event."

In addition, an Offer to Purchase may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of launching the Offer to Purchase.

Certain Covenants

Set forth below are descriptions of certain covenants contained in the Indenture:

Covenant Suspension

If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing under the Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "*Covenant Suspension Event*"), the Company and its Restricted Subsidiaries will not be subject to the covenants (the "*Suspended Covenants*") described under:

- (1) " Certain Covenants Limitation on Incurrence of Debt;"
- (2) " Certain Covenants Limitation on Layering Debt;"
- (3) " Certain Covenants Limitation on Restricted Payments;"
- (4) " Certain Covenants Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries;"
- (5) " Certain Covenants Limitation on Asset Sales;"
- (6) " Certain Covenants Limitation on Transactions with Affiliates;"
- (7) clause (iii) of " Certain Covenants Consolidation, Merger, Conveyance, Transfer or Lease;" and
- (8) " Certain Covenants Limitation on Business Activities."

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In the event that the Company and its Restricted Subsidiaries are not subject to the Suspended Covenants under the Indenture for any period of time as a result of the foregoing, and on any subsequent date (the "*Reversion Date*") (a) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating or (b) the Company or any of its affiliates enters into an agreement to effect a transaction that would result in a Change of Control and one or more of the Rating Agencies indicate that if consummated, such transaction (alone or together with any related recapitalization or refinancing transactions) would cause such Rating Agency to withdraw its Investment Grade Rating or downgrade the ratings assigned to the Notes below an Investment Grade Rating, then the Company and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under the Indenture with respect to future events. The period beginning on the date of a Covenant Suspension Event and ending on a Reversion Date is called a "*Suspension Period*."

On each Reversion Date, all Debt incurred, or Redeemable Capital Interests or Preferred Interests issued, during the Suspension Period will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (iv) of the definition of "Permitted Debt." Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under the covenant described under the caption " Certain Covenants Limitation on Restricted Payments" will be made as though the covenant described under the caption " Certain Covenants Limitation on Restricted Payments" had been in effect since the Issue Date and throughout the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under the first paragraph of the covenant described under the caption " Certain Covenants Limitation on Restricted Payments." However, no Default or Event of Default will be deemed to have occurred on the Reversion Date (or thereafter) under any Suspended Covenant solely as a result of any actions taken by the Company or its Restricted Subsidiaries, or events occurring, during the Suspension Period. For purposes of the covenant described under the caption "Limitation on Asset Sales," on the Reversion Date, the unutilized Excess Proceeds amount will be reset to zero.

There can be no assurance that the Notes will ever achieve or maintain Investment Grade Ratings.

Limitation on Incurrence of Debt

The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Debt (including Acquired Debt); *provided*, that the Company and any of its Restricted Subsidiaries that is a Guarantor may Incur Debt (including Acquired Debt) if, immediately after giving effect to the Incurrence of such Debt and the receipt and application of the proceeds therefrom, (a) the Consolidated Fixed Charge Coverage Ratio of the Company would be greater than (A) on or prior to June 30, 2011, 2.0:1.0, (B) following June 30, 2011 and or prior to June 30, 2012, 2.25:1.0 and (C) following June 30, 2012, 2.5:1.0 and (b) no Default or Event of Default shall have occurred and be continuing at the time or as a consequence of the Incurrence of such Debt.

Notwithstanding the first paragraph above, the Company and its Restricted Subsidiaries may Incur Permitted Debt.

For purposes of determining compliance with this "Limitation on Incurrence of Debt" covenant, (x) Debt outstanding or Incurred under any Credit Facility on the Issue Date shall at all times be treated as Incurred pursuant to clause (i) of the definition of "Permitted Debt," and may not be re-classified, (y) Guarantees or obligations with respect to letters of credit supporting Debt otherwise included in the determination of such particular amount shall not be included and (z) except as provided above, in the event that an item of Debt meets the criteria of more than one of the types of Debt described above, including categories of Permitted Debt and the first paragraph of this

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"Limitation on Incurrence of Debt" covenant, the Company, in its sole discretion, shall classify, and from time to time may reclassify, all or any portion of such item of Debt and may divide an item into more than one type of Debt.

The accrual of interest, the accretion or amortization of original issue discount and the payment of interest on Debt in the form of additional Debt, or payment of dividends on Capital Interests in the form of additional shares of Capital Interests with the same terms or the reclassification of Capital Interests as Debt due to a change in GAAP will not be deemed to be an Incurrence of Debt or issuance of Capital Interests for purposes of this covenant.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Debt, the U.S. dollar-equivalent principal amount of Debt denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Debt was Incurred, in the case of term Debt, or first committed, in the case of revolving credit Debt; *provided* that if such Debt is Incurred to refinance other Debt denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Debt does not exceed the principal amount of such Debt being refinanced.

Limitation on Layering Debt

The Company will not, and will not permit any Guarantor to, Incur any Debt that pursuant to its terms is subordinate or junior in right of payment to any Debt unless such Debt is subordinated in right of payment to the Notes and the Note Guarantees to the same extent. For all purposes under the Indenture, Debt will not be considered subordinate or junior in right of payment to any other Debt solely by virtue of being unsecured or secured to a greater or lesser extent or with greater or lower priority.

Limitation on Restricted Payments

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make any Restricted Payment unless, at the time of and after giving effect to the proposed Restricted Payment:

(a) no Default or Event of Default shall have occurred and be continuing or will occur as a consequence thereof;

(b) after giving effect to such Restricted Payment on a pro forma basis, the Company would be permitted to Incur at least \$1.00 of additional Debt (other than Permitted Debt) pursuant to the provisions described in the first paragraph under the caption " Certain Covenants Limitation on Incurrence of Debt;" and

(c) after giving effect to such Restricted Payment on a pro forma basis, the aggregate amount expended or declared for all Restricted Payments made on or after the Issue Date (excluding Restricted Payments permitted by clauses (ii), (iii), (iv), (v), (vi), (vii) and (viii) of the next succeeding paragraph), shall not exceed the sum (without duplication) of:

(1) 50% of the Consolidated Net Income (or, if Consolidated Net Income shall be a deficit, minus 100% of such deficit) of the Company accrued on a cumulative basis during the period (taken as one accounting period) from January 1, 2010 and ending on the last day of the fiscal quarter for which consolidated financial statements are available ended immediately prior to the date of such proposed Restricted Payment, *plus*

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(2) 100% of the aggregate net proceeds (including the Fair Market Value of property other than cash) received by the Company subsequent to the Issue Date either (i) as a contribution to its common equity capital or (ii) from the issuance and sale (other than to a Subsidiary) of its Qualified Capital Interests, including Qualified Capital Interests issued upon the conversion of Debt or Redeemable Capital Interests of the Company, and from the exercise of options, warrants or other rights to purchase such Qualified Capital Interests (other than, in each case, Capital Interests or Debt sold to a Subsidiary of the Company), *plus*

(3) 100% of the net reduction in Investments (other than Permitted Investments), subsequent to the Issue Date, in any Person, resulting from (i) payments of interest on Debt, dividends, repayments of loans or advances (but only to the extent such interest, dividends or repayments are not included in the calculation of Consolidated Net Income), in each case to the Company or any Restricted Subsidiary from any Person or (ii) the redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary (which shall be calculated, in the case of this clause (ii), as the Fair Market Value of the Company's proportionate interest in such Subsidiary immediately following such redesignation, as determined in good faith by the Board of Directors), in each case, not to exceed in the case of any Person the amount of Investments (other than Permitted Investments) previously made by the Company or any Restricted Subsidiary in such Person.

Notwithstanding the foregoing provisions, the Company and its Restricted Subsidiaries may take the following actions, *provided* that, in the case of clauses (iii), (iv) and (x), immediately after giving effect to such action, no Default or Event of Default has occurred and is continuing:

(i) the payment of any dividend on, or redemption of, Capital Interests in the Company or a Restricted Subsidiary within 60 days after declaration thereof if at the declaration date such payment would not have been prohibited by the foregoing provisions of this covenant;

(ii) the retirement of any Qualified Capital Interests of the Company by conversion into, or by or in exchange for, Qualified Capital Interests, or out of net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of other Qualified Capital Interests of the Company;

(iii) the redemption, defeasance, repurchase or acquisition or retirement for value of any Debt of the Company or a Guarantor that is subordinate in right of payment to the Notes or the applicable Note Guarantee out of the net cash proceeds of a substantially concurrent issue and sale (other than to a Subsidiary of the Company) of (x) new subordinated Debt of the Company or such Guarantor, as the case may be, incurred in accordance with the Indenture or (y) Qualified Capital Interests of the Company;

(iv) the purchase, redemption, retirement or other acquisition for value of Capital Interests in the Company held by current or former employees, directors, officers, managers or consultants of the Company or any Restricted Subsidiary (or their estates or beneficiaries under their estates) upon death, disability, retirement or termination of employment or pursuant to the terms of any agreement under which such Capital Interests were issued; *provided* that the aggregate cash consideration paid for all such purchases, redemptions, retirements or other acquisitions of such Capital Interests does not exceed \$2.5 million in any calendar year (which amount shall be increased by (x) the amount of any net cash proceeds of key man life insurance policies received by the Company and its Restricted Subsidiaries after the Issue Date that have not been applied to the payment of Restricted Payments pursuant to this clause (iv) and (y) the amount of net cash proceeds received by the Company and its Restricted Subsidiaries after the Issue Date from the issuance and sale of Capital Interests in the Company to employees, directors, officers, managers or consultants of the Company or any Restricted Subsidiary); *provided* that any unused amounts in any calendar year may be carried forward to one or

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more future periods; *provided, further*, that the aggregate amount of repurchases made pursuant to this clause (iv) may not exceed \$5.0 million in any calendar year;

(v) the repurchase of Capital Interests deemed to occur upon the exercise of stock options, warrants or other convertible or exchangeable securities to the extent such Capital Interests represent a portion of the exercise price of those stock options, warrants or other convertible or exchangeable securities;

(vi) the prepayment of intercompany Debt, the Incurrence of which was permitted pursuant to the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt;"

(vii) cash payment, in lieu of issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Capital Interests of the Company or a Restricted Subsidiary;

(viii) the declaration and payment of dividends to holders of any class or series of Redeemable Capital Interests of the Company or any Restricted Subsidiary issued or Incurred in compliance with the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt" to the extent such dividends are included in the definition of "Consolidated Fixed Charges;"

(ix) upon the occurrence of a Change of Control Triggering Event or an Asset Sale, the defeasance, redemption, repurchase or other acquisition of any subordinated Debt pursuant to provisions substantially similar to those described under " Change of Control" and " Certain Covenants Limitation on Asset Sales" at a purchase price not greater than 101% of the principal amount thereof (in the case of a Change of Control Triggering Event) or at a percentage of the principal amount thereof not higher than 100% of the principal amount thereof (in the case of an Asset Sale), plus any accrued and unpaid interest thereon; *provided* that prior to or contemporaneously with such defeasance, redemption, repurchase or other acquisition, the Company has made an Offer to Purchase with respect to the Notes and has repurchased all Notes validly tendered for payment and not withdrawn in connection therewith;

(x) other Restricted Payments not in excess of \$25.0 million in the aggregate since the Issue Date; and

(xi) the payment to the Permitted Holders of up to \$5.5 million in the aggregate of fees and expenses related to the transactions disclosed in the offering memorandum related to initial offer and sale of the Notes.

If any Person in which an Investment is made, which Investment constitutes a Restricted Payment when made, thereafter becomes a Restricted Subsidiary in accordance with the Indenture, all such Investments previously made in such Person shall no longer be counted as Restricted Payments for purposes of calculating the aggregate amount of Restricted Payments pursuant to clause (c) of the first paragraph under this "Limitation on Restricted Payments" covenant, in each case to the extent such Investments would otherwise be so counted.

If the Company or a Restricted Subsidiary transfers, conveys, sells, leases or otherwise disposes of an Investment in accordance with the covenant described under the caption " Certain Covenants Limitation on Asset Sales," which Investment was originally included in the aggregate amount expended or declared for all Restricted Payments pursuant to clause (c) of the first paragraph under this "Limitation on Restricted Payments" covenant, the aggregate amount expended or declared for all Restricted Payments shall be reduced by the Net Cash Proceeds from the transfer, conveyance, sale, lease or other disposition of such Investment, to the extent originally included in the aggregate amount

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expended or declared for all Restricted Payments pursuant to clause (c) of the first paragraph under this "Limitation on Restricted Payments" covenant.

For purposes of this covenant, if a particular Restricted Payment involves a non-cash payment, including a distribution of assets, then such Restricted Payment shall be deemed to be an amount equal to the cash portion of such Restricted Payment, if any, plus an amount equal to the Fair Market Value of the non-cash portion of such Restricted Payment.

Limitation on Liens

The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to enter into, create, incur, assume or suffer to exist any Liens of any kind on or with respect to the Collateral except Permitted Collateral Liens. Subject to the immediately preceding sentence, the Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to enter into, create, incur, assume or suffer to exist any Liens of any kind, other than Permitted Liens, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom except the Collateral without securing the Notes and all other amounts due under the Indenture and the Security Documents (for so long as such Lien exists) equally and ratably with (or prior to) the obligation or liability secured by such Lien.

Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, cause or suffer to exist or become effective or enter into any encumbrance or restriction on the ability of any Restricted Subsidiary to (i) pay dividends or make any other distributions on its Capital Interests owned by the Company or any Restricted Subsidiary or pay any Debt or other obligation owed to the Company or any Restricted Subsidiary, (ii) make loans or advances to the Company or any Restricted Subsidiary thereof or (iii) transfer any of its property or assets to the Company or any Restricted Subsidiary.

However, the preceding restrictions will not apply to the following encumbrances or restrictions existing under or by reason of:

(a) any encumbrance or restriction in existence on the Issue Date and any amendments, modifications, restatements, renewals, restructurings, increases, supplements, refundings, replacements or refinancings thereof, *provided* that the amendments, modifications, restatements, renewals, restructurings, increases, supplements, refundings, replacement or refinancings, in the good faith judgment of the Company, are no more restrictive, taken as a whole, with respect to such dividend or other payment restrictions than those contained in these agreements on the Issue Date or refinancings thereof;

(b) any encumbrance or restriction pursuant to an agreement relating to an acquisition of property or assets, so long as the encumbrances or restrictions in any such agreement relate solely to the property or assets so acquired (and are not or were not created in anticipation of or in connection with the acquisition thereof);

(c) any encumbrance or restriction which exists with respect to a Person that becomes a Restricted Subsidiary or merges with or into a Restricted Subsidiary of the Company on or after the Issue Date, which is in existence at the time such Person becomes a Restricted Subsidiary, but not created in connection with or in anticipation of such Person becoming a Restricted Subsidiary, and which is not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person becoming a Restricted Subsidiary;

(d) any encumbrance or restriction pursuant to an agreement effecting a permitted renewal, refunding, replacement, refinancing or extension of Debt issued pursuant to an agreement containing

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any encumbrance or restriction referred to in the foregoing clauses (a) through (c), so long as the encumbrances and restrictions contained in any such refinancing agreement are no less favorable in any material respect to the Holders than the encumbrances and restrictions contained in the agreements governing the Debt being renewed, refunded, replaced, refinanced or extended in the good faith judgment of the Board of Directors of the Company;

(e) customary provisions restricting subletting or assignment of any lease, contract, or license of the Company or any Restricted Subsidiary or provisions in agreements that restrict the assignment of such agreement or any rights thereunder;

(f) any encumbrance or restriction by reason of applicable law, rule, regulation or order;

(g) any encumbrance or restriction under a Credit Facility permitted under the Indenture, the Indenture, the Notes and the Note Guarantees;

(h) any encumbrance or restriction imposed under any agreement for the sale of assets pending the closing of such sale, including, without limitation, any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending its sale or other disposition;

(i) restrictions on cash and other deposits or net worth imposed by customers under contracts entered into the ordinary course of business;

(j) Purchase Money Debt (including Capital Lease Obligations) incurred in compliance with the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt" for property acquired in the ordinary course of business that imposes restrictions on that property of the nature described in clause (iii) of the first paragraph hereof;

(k) Liens securing, and other restrictions contained in agreements governing, Debt otherwise permitted to be incurred under the Indenture, including the provisions of the covenant described under the caption " Certain Covenants Limitation on Liens;"

(l) customary provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements otherwise permitted by the Indenture and entered into with the approval of the Company's Board of Directors, which limitation is applicable only to the assets that are the subject of such agreements; and

(m) any Non-Recourse Receivable Subsidiary Indebtedness or other contractual requirements of a Receivable Subsidiary that is a Restricted Subsidiary in connection with a Qualified Receivables Transaction; *provided* that such restrictions apply only to such Receivable Subsidiary or the receivables and related assets described in the definition of "Qualified Receivables Transaction" which are subject to such Qualified Receivables Transaction.

Limitation on Asset Sales

The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Capital Interests issued or sold or otherwise disposed of;

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(2) at least 75% of the consideration received in the Asset Sale by the Company or such Restricted Subsidiary is in the form of cash or Eligible Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:

(a) any liabilities, as shown on the most recent consolidated balance sheet of the Company or any Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assignment and assumption agreement that releases the Company or such Restricted Subsidiary from further liability;

(b) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash within 180 days of their receipt to the extent of the cash received in that conversion; and

(c) any Designated Non-cash Consideration received by the Company or any Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (x) \$25.0 million and (y) 3.0% of Total Assets at the time of the receipt of such Designated Non-cash Consideration, with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value; and

(3) if such Asset Sale involves the disposition of Collateral, the Company or such Subsidiary has complied with the provisions of the Indenture and the Security Documents, including those described under the caption " Use and Release of Collateral."

Within 360 days after the receipt of any Net Cash Proceeds from an Asset Sale, the Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Cash Proceeds at its option:

(1) to permanently repay secured Debt under any Credit Facility and, if the Obligation repaid is revolving credit Debt, to correspondingly reduce commitments with respect thereto;

(2) to acquire assets constituting, or any Capital Interests of, a Permitted Business, if, after giving effect to any such acquisition of Capital Interests, such assets are owned by the Company or a Restricted Subsidiary or the Person owning such Permitted Business is or becomes a Restricted Subsidiary of the Company;

(3) to make a capital expenditure in or that is used or useful in a Permitted Business or to make expenditures for maintenance, repair or improvement of existing properties and assets in accordance with the provisions of the Indenture;

(4) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business; or

(5) any combination of the foregoing;

provided that, in the case of clauses (2) and (3) above, if the Company or such Restricted Subsidiary enters into a binding agreement to make any such acquisition or expenditure within such 360-day period, but if the consummation of the transactions under such agreement has not occurred within such 360-day period, and the agreement has not been terminated, then the 360-day period will be extended to 540 days to permit such consummation; *provided, further, however*, if such consummation does not occur, or such agreement is terminated within such 540-day period, then such Net Cash Proceeds will constitute Excess Proceeds. Pending the final application of any such Net Cash Proceeds within the relevant time periods referred to in the previous sentence, the Company may temporarily reduce

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revolving credit borrowings or otherwise invest such Net Cash Proceeds in any manner that is not prohibited by the Indenture.

Subject to the next paragraph, any Net Cash Proceeds from Asset Sales that are not applied or invested as provided in the preceding paragraph of this covenant will constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds exceeds \$10.0 million, within thirty days thereof, the Company will make an Offer to Purchase to all Holders and to all holders of other Debt ranking *pari passu* with the Notes containing provisions similar to those set forth in the Indenture with respect to assets sales, equal to the Excess Proceeds. The offer price in any Offer to Purchase will be equal to 100% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Offer to Purchase, the Company may use those Excess Proceeds for any purpose not otherwise prohibited by the Indenture (and such remaining amount shall not be added to any subsequent Excess Proceeds for any purpose under the Indenture). If the aggregate principal amount of Notes and other *pari passu* debt tendered into such Offer to Purchase exceeds the amount of Excess Proceeds, the Trustee will select the Notes to be purchased on a *pro rata* basis. Upon completion of each Offer to Purchase, the amount of Excess Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Offer to Purchase. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of the Indenture by virtue of such compliance.

Limitation on Transactions with Affiliates

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of related transactions, contract, agreement, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "*Affiliate Transaction*") involving aggregate consideration in excess of \$2.5 million, unless:

- (i) such Affiliate Transaction is on terms that are not materially less favorable to the Company or the relevant Restricted Subsidiary than those that could reasonably have been obtained in a comparable arm's length transaction by the Company or such Restricted Subsidiary with an unaffiliated party; and
- (ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$5.0 million, the Company delivers to the Trustee a resolution adopted in good faith by the majority of the Board of Directors of the Company approving such Affiliate Transaction and set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with clause (i) above; and
- (iii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$15.0 million, the Company must obtain and deliver to the Trustee a written opinion of a nationally recognized investment banking, accounting or appraisal firm (an "*Independent Financial Advisor*") stating that the transaction is fair to the Company or such Restricted Subsidiary, as the case may be, from a financial point of view.

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The foregoing limitation does not limit, and shall not apply to:

- (1) Restricted Payments that are permitted by the provisions of the Indenture described under the caption " Certain Covenants Limitation on Restricted Payments" and Permitted Investments permitted under the Indenture;
- (2) the payment of reasonable and customary fees, expenses and indemnities to members of the Board of Directors of the Company or a Restricted Subsidiary;
- (3) the payment of reasonable and customary compensation and other benefits (including retirement, health, option, deferred compensation and other benefit plans) and indemnities to officers and employees of the Company or any Restricted Subsidiary as determined by the Board of Directors thereof in good faith;
- (4) payments by the Company or any of its Restricted Subsidiaries to any of the Permitted Holders made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures, which payments are approved by a majority of the disinterested members of the Board of Directors in good faith; *provided* that the aggregate amount of such payments may not exceed \$5.0 million in any calendar year;
- (5) transactions between or among the Company and/or its Restricted Subsidiaries;
- (6) any agreement or arrangement as in effect on the Issue Date and any amendment or modification thereto or replacement thereof so long as such amendment or modification or replacement is not, in the good faith judgment of the Board of Directors of the Company, more disadvantageous to Holders in any material respect;
- (7) transactions in which the Company delivers to the Trustee a written opinion from an Independent Financial Advisor to the effect that the transaction is fair, from a financial point of view, to the Company and any relevant Restricted Subsidiaries;
- (8) any contribution of capital to the Company;
- (9) the payment to the Permitted Holders of up to \$5.5 million in the aggregate of fees and expenses related to the transactions disclosed in the offering memorandum related to initial offer and sale of the Notes;
- (10) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case, in the ordinary course of business and on terms that are no less favorable to the Company or such Restricted Subsidiary, as the case may be, as determined in good faith by the Company, than those that could be obtained in a comparable arm's length transaction with a Person that is not an Affiliate of the Company; and
- (11) transactions effected as part of a Qualified Receivables Transaction.

Limitation on Sale and Leaseback Transactions

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale and Leaseback Transaction unless:

- (i) the consideration received in such Sale and Leaseback Transaction is at least equal to the fair market value of the property sold, as determined by a board resolution of the Board of Directors of the Company or by an Officers' Certificate;
- (ii) prior to and after giving effect to the Attributable Debt in respect of such Sale and Leaseback Transaction, the Company and such Restricted Subsidiary comply with the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt; and

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(iii) at or after such time the Company and such Restricted Subsidiary also comply with the covenant described under the caption " Certain Covenants Limitation on Asset Sales."

Payment for Consents

The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or agreed to be paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

Provision of Financial Information

Whether or not required by the Commission, so long as any Notes are outstanding (unless defeased in a legal or covenant defeasance), the Company will have its annual financial statements audited, and its interim financial statements reviewed, by a nationally recognized firm of independent accountants and will furnish to the Holders, no later than 90 days after the end of each fiscal year (in the case of annual financial statements) and 45 days after the end of each of the first three fiscal quarters (in the case of quarterly financial statements), all quarterly and annual financial statements in the form included in the offering memorandum related to initial offer and sale of the Notes prepared in accordance with GAAP that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file those Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Company's certified independent accountants. To the extent that the Company does not file such information with the Commission, the Company will deliver such information and such reports to the Trustee and post such information and such reports to Intralinks or a comparable password protected online data system, such that such information and such reports are available electronically to (a) any Holder, (b) any beneficial owner of the Notes, who certifies that it is a beneficial owner of Notes, (c) any prospective investor who certifies that it is a Qualified Institutional Buyer (as defined in the Securities Act) or (d) any securities analyst who certifies that it is a securities analyst and who requests a password from the Company and agrees to treat such information as confidential. If at any time the Company is not subject to the reporting requirements of the Exchange Act, the Company will also hold a quarterly conference call to discuss such financial information. The conference call will not be later than five business days from the time that the Company distributes the financial information as set forth above.

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, then, to the extent that any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries would (but for its or their being designated as an Unrestricted Subsidiary or Subsidiaries) constitute a Significant Subsidiary or Subsidiaries, the quarterly and annual financial information required by the preceding paragraph shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

Following the consummation of the Exchange Offer (as defined in the Registration Rights Agreement), whether or not required by the Commission, the Company will file a copy of all of the information and reports that would be required by the Commission for public availability within the time periods specified in the Commission's rules and regulations (unless the Commission will not accept such a filing) and make such information available to securities analysts and prospective investors upon request. In addition, the Company and the Guarantors will agree that, for so long as

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any Notes remain outstanding, they 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.

In the event that any parent of the Company becomes a Guarantor or co-obligor of the Notes, the Indenture will permit the Company to satisfy its obligations under this covenant with respect to financial information relating to the Company by furnishing financial information relating to such parent; *provided* that, if required by Regulation S-X, the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent and any of its Subsidiaries other than the Company and its Subsidiaries, on the one hand, and the information relating to the Company, the Subsidiary Guarantors, if any, and the other Subsidiaries of the Company on a standalone basis, on the other hand.

Notwithstanding the foregoing, the Company will be deemed to have furnished such reports referred to above to the Holders if it or any parent of the Company has filed such reports with the Commission via the EDGAR filing system and such reports are publicly available. In addition, such requirements shall be deemed satisfied prior to the commencement of the Exchange Offer or the effectiveness of the Shelf Registration Statement (as defined in the Registration Rights Agreement) by the filing with the Commission of the Exchange Offer Registration Statement (as defined in the Registration Rights Agreement) and/or Shelf Registration Statement in accordance with the provisions of the Registration Rights Agreement, and any amendments thereto, with such financial information that satisfies Regulation S-X and such registration statement and/or amendments thereto are filed at times that otherwise satisfy the time requirements set forth in the first paragraph of this covenant.

Additional Note Guarantees

On the Issue Date, each of the Guarantors will guarantee the Notes in the manner and on the terms set forth in the Indenture. In addition, following the Issue Date, each newly formed or newly acquired Domestic Restricted Subsidiary of the Company (other than any Immaterial Subsidiary) shall, within 60 days of its formation or acquisition, execute and deliver to the Trustee a supplemental indenture or guarantee in the manner and on the terms set forth in the Indenture.

After the Issue Date, the Company will cause each of its Restricted Subsidiaries (other than Immaterial Subsidiaries) that:

(a) guarantees any Debt of the Company or a Guarantor; or

(b) Incurs any Debt pursuant to the provisions described in the first paragraph under the caption " Certain Covenants Limitation on Incurrence of Debt" or clause (xiii) of the definition of "Permitted Debt" or not permitted by the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt,"

in each case, to guarantee the Notes.

Each Note Guarantee by a Guarantor will be limited to an amount not to exceed the maximum amount that can be guaranteed by that Guarantor without rendering its Note Guarantee voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. The Note Obligations of any Person that is or becomes a Guarantor after the Issue Date will be secured equally and ratably by a first- priority Security Interest in the Collateral granted to the Collateral Agent for the benefit of the Holders. Such Guarantor will enter into a joinder agreement to the applicable Security Documents defining the terms of the Security Interests that secure payment and performance when due of the Notes and take all actions advisable in the opinion of the Company, as set forth in an Officers' Certificate accompanied by an opinion of counsel to the Company to cause the Note Liens created by the Security Documents to be duly perfected to the extent required by such agreement in accordance with all applicable law, including the filing of financing statements in such jurisdictions as requested by the Company or the Collateral Agent.

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Further Assurances

The Company will, and will cause each of its existing and future Restricted Subsidiaries to, execute and deliver such additional instruments, certificates or documents, and take all such actions as may be reasonably required from time to time in order to:

- (1) carry out more effectively the purposes of the Security Documents;
- (2) create, grant, perfect and maintain the validity, effectiveness and priority of any of the Security Documents and the Liens created, or intended to be created, by the Security Documents; and
- (3) ensure the protection and enforcement of any of the rights granted or intended to be granted to the Trustee under any other instrument executed in connection therewith.

Upon the exercise by the Trustee or any Holder of any power, right, privilege or remedy under the Indenture or any of the Security Documents which requires any consent, approval, recording, qualification or authorization of any governmental authority, the Company will, and will cause each of its Restricted Subsidiaries to, execute and deliver all applications, certifications, instruments and other documents and papers that may be reasonably required from the Company or any of its Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

Limitation on Creation of Unrestricted Subsidiaries

The Company may designate any Subsidiary of the Company to be an "Unrestricted Subsidiary" as provided below, in which event such Subsidiary and each other Person that is a Subsidiary of such Subsidiary will be deemed to be an Unrestricted Subsidiary.

"Unrestricted Subsidiary" means:

(1) any Subsidiary designated as such by the Board of Directors of the Company as set forth below where (a) neither the Company nor any of its Restricted Subsidiaries (i) provides credit support for, or Guarantee of, any Debt of such Subsidiary or any Subsidiary of such Subsidiary (including any undertaking, agreement or instrument evidencing such Debt, but excluding in the case of a Receivable Subsidiary any Standard Securitization Undertakings) or (ii) is directly or indirectly liable for any Debt of such Subsidiary or any Subsidiary of such Subsidiary (except in the case of a Receivable Subsidiary any Standard Securitization Undertakings), and (b) no default with respect to any Debt of such Subsidiary or any Subsidiary of such Subsidiary (including any right which the holders thereof may have to take enforcement action against such Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Debt of the Company and its Restricted Subsidiaries to declare a default on such other Debt or cause the payment thereof to be accelerated or payable prior to its final scheduled maturity (except in the case of a Receivable Subsidiary any Standard Securitization Undertakings); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Company may designate any Subsidiary to be an Unrestricted Subsidiary unless such Subsidiary owns any Capital Interests of, or owns or holds any Lien on any property of, any other Restricted Subsidiary of the Company, *provided* that either:

(x) the Subsidiary to be so designated is an Immaterial Subsidiary; or

(y) immediately after giving effect to such designation, the Company could (A) Incur at least \$1.00 of additional Debt (other than Permitted Debt) pursuant to the provisions described in the first paragraph under the caption " Certain Covenants Limitation on Incurrence of Debt" and (B) make a Restricted Payment in an amount equal to the greater of the Fair Market Value or book value of such Subsidiary pursuant to the covenant described under the caption " Certain Covenants Limitation on Restricted Payments" and such amount is thereafter treated as a Restricted Payment for the purpose of calculating the amount available for Restricted Payments thereunder.

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An Unrestricted Subsidiary may be designated as a Restricted Subsidiary if (i) all the Debt of such Unrestricted Subsidiary could be Incurred under the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt" and (ii) all the Liens on the property and assets of such Unrestricted Subsidiary could be incurred pursuant to the covenant described under the caption " Certain Covenants Limitation on Liens."

Consolidation, Merger, Conveyance, Transfer or Lease

The Company will not in any transaction or series of transactions, consolidate with or merge into any other Person (other than a merger of a Restricted Subsidiary into the Company in which the Company is the continuing Person or the merger of a Restricted Subsidiary into or with another Restricted Subsidiary or another Person that as a result of such transaction becomes or merges into a Restricted Subsidiary), or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of the assets of the Company and its Restricted Subsidiaries (determined on a consolidated basis), taken as a whole, to any other Person, unless:

(i) either: (a) the Company shall be the continuing Person or (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged, or the Person that acquires, by sale, assignment, conveyance, transfer, lease or other disposition, all or substantially all of the property and assets of the Company (such Person, the "*Surviving Entity*"), (1) shall be a corporation, partnership, limited liability company or similar entity organized and validly existing under the laws of the United States, any political subdivision thereof or any state thereof or the District of Columbia, (2) shall expressly assume, by a supplemental indenture, the due and punctual payment of all amounts due in respect of the principal of (and premium, if any) and interest on all the Notes and the performance of the covenants and obligations of the Company under the Indenture and (3) shall expressly assume the due and punctual performance of the covenants and obligations of the Company and the Guarantors under the Security Documents; *provided* that at any time the Company or its successor is not a corporation, there shall be a co-issuer of the Notes that is a corporation;

(ii) immediately before and immediately after giving effect to such transaction or series of transactions on a pro forma basis (including, without limitation, any Debt Incurred or anticipated to be Incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(iii) immediately after giving effect to any such transaction or series of transactions on a pro forma basis (including, without limitation, any Debt Incurred or anticipated to be Incurred in connection with or in respect of such transaction or series of transactions) as if such transaction or series of transactions had occurred on the first day of the determination period, the Company (or the *Surviving Entity* if the Company is not continuing) could Incur \$1.00 of additional Debt (other than Permitted Debt) pursuant to the provisions described in the first paragraph under the caption " Certain Covenants Limitation on Incurrence of Debt;"

(iv) the Company delivers, or causes to be delivered, to the Trustee an Officers' Certificate and an opinion of counsel, each stating that such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition complies with the requirements of the Indenture;

(v) the *Surviving Entity* causes such amendments, supplements or other instruments to be executed, delivered, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien of the Security Documents on the Collateral owned by or transferred to the *Surviving Entity*, together with such financing

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statements as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement under the Uniform Commercial Code of the relevant states;

(vi) the Collateral owned by or transferred to the Surviving Entity shall (a) continue to constitute Collateral under the Indenture and the Security Documents, (b) be subject to the Lien in favor of the Collateral Agent for the benefit of the Trustee and the Holders, and (c) not be subject to any Lien other than Permitted Collateral Liens; and

(vii) the property and assets of the Person which is merged or consolidated with or into the Surviving Entity, to the extent that they are property or assets of the types which would constitute Collateral under the Security Documents, shall be treated as after-acquired property and the Surviving Entity shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in the Indenture.

The preceding clause (iii) will not prohibit:

(a) a merger between the Company and a Restricted Subsidiary that is a wholly owned Subsidiary of the Company; or

(b) a merger between the Company and an Affiliate incorporated solely for the purpose of converting the Company into a corporation organized under the laws of the United States or any political subdivision or state thereof;

so long as, in each case, the amount of Debt of the Company and its Restricted Subsidiaries is not increased thereby.

For all purposes of the Indenture and the Notes, Subsidiaries of any Surviving Entity will, upon such transaction or series of transactions, become Restricted Subsidiaries or Unrestricted Subsidiaries as provided pursuant to the Indenture and all Debt, and all Liens on property or assets, of the Surviving Entity and its Subsidiaries that was not Debt, or were not Liens on property or assets, of the Company and its Subsidiaries immediately prior to such transaction or series of transactions shall be deemed to have been Incurred upon such transaction or series of transactions.

Upon any transaction or series of transactions that are of the type described in, and are effected in accordance with, conditions described in the immediately preceding paragraphs, the Surviving Entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company, under the Indenture with the same effect as if such Surviving Entity had been named as the Company therein; and when a Surviving Entity duly assumes all of the obligations and covenants of the Company pursuant to the Indenture and the Notes, except in the case of a lease, the predecessor Person shall be relieved of all such obligations.

Limitation on Business Activities

The Company will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Permitted Business.

Impairment of Security Interests

The Company and the Guarantors will not, and will not permit any of their Restricted Subsidiaries to, (i) take or omit to take any action with respect to the Collateral that could reasonably be expected to have the result of affecting or impairing the security interest in the Collateral in favor of the Collateral Agent for the benefit of the Trustee and for the benefit of the Holders or (ii) grant to any Person (other than the Collateral Agent for the benefit of the Trustee and the Holders) any

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interest whatsoever in the Collateral, in each case except as provided for in the Indenture or the Security Documents.

Events of Default

Each of the following is an "Event of Default" under the Indenture:

- (1) default in the payment in respect of the principal of (or premium, if any, on) any Note when due and payable (whether at Stated Maturity or upon repurchase, acceleration, optional redemption or otherwise);
- (2) default in the payment of any interest upon any Note when it becomes due and payable, and continuance of such default for a period of 30 days;
- (3) failure to perform or comply with the Indenture provisions described under " Certain Covenants Consolidation, Merger, Conveyance, Transfer or Lease;"
- (4) except as permitted by the Indenture, any Note Guarantee of any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) shall for any reason cease to be, or it shall be asserted by any Guarantor or the Company not to be, in full force and effect and enforceable in accordance with its terms;
- (5) default in the performance, or breach, of any covenant or agreement of the Company or any Guarantor in the Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (1), (2), (3) or (4) above), and continuance of such default or breach for a period of 60 days (or 120 days in relation to the covenant described under the caption " Certain Covenants Provision of Financial Information") after written notice thereof has been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the outstanding Notes;
- (6) a default or defaults under any bonds, debentures, notes or other evidences of Debt (other than the Notes) by the Company or any Restricted Subsidiary having, individually or in the aggregate, a principal or similar amount outstanding of at least \$25.0 million, whether such Debt now exists or shall hereafter be created, which default or defaults shall have resulted in the acceleration of the maturity of such Debt prior to its express maturity or shall constitute a failure to pay at least \$25.0 million of such Debt when due and payable after the expiration of any applicable grace period with respect thereto;
- (7) the entry against the Company or any Restricted Subsidiary that is a Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) of a final judgment or final judgments for the payment of money in an aggregate amount in excess of \$25.0 million (net of amounts covered by insurance), by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 consecutive days;
- (8) certain events in bankruptcy, insolvency or reorganization affecting the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary); or
- (9) unless all of the Collateral has been released from the Note Liens in accordance with the provisions of the Security Documents, default by the Company or any Subsidiary in the performance of the Security Documents which adversely affects the enforceability, validity, perfection or priority of the Note Liens on a material portion of the Collateral granted to the Collateral Agent for the benefit of the Trustee and the Holders, the repudiation or disaffirmation by the Company or any Subsidiary of its material obligations under the Security Documents or the determination in a judicial proceeding that the Security Documents are unenforceable or invalid against the Company or any Subsidiary party thereto for any reason with respect to a material portion of the Collateral (which default, repudiation,

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disaffirmation or determination is not rescinded, stayed, or waived by the Persons having such authority pursuant to the Security Documents or otherwise cured within 60 days after the Company receives written notice thereof specifying such occurrence from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Note Obligations and demanding that such default be remedied).

If an Event of Default (other than an Event of Default specified in clause (8) above with respect to the Company) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the principal of the Notes and any accrued interest on the Notes to be due and payable immediately by a notice in writing to the Company (and to the Trustee if given by Holders); *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 the outstanding Notes may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal of or interest on the Notes, have been cured or waived as provided in the Indenture.

In the event of a declaration of acceleration of the Notes solely because an Event of Default described in clause (6) above has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically rescinded and annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) shall be remedied or cured by the Company or a Restricted Subsidiary of the Company or waived by the holders of the relevant Debt within 20 business days after the declaration of acceleration with respect thereto and if the rescission and annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction obtained by the Trustee for the payment of amounts due on the Notes.

If an Event of Default specified in clause (8) above occurs with respect to the Company, the principal of and any accrued interest on the Notes then outstanding shall ipso facto become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. For further information as to waiver of defaults, see " Amendment, Supplement and Waiver." The Trustee may withhold from Holders notice of any Default (except Default in payment of principal of, premium, if any, and interest) if the Trustee determines that withholding notice is in the interests of the Holders to do so.

No Holder will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless such Holder shall have previously given to the Trustee written notice of a continuing Event of Default and unless the Holders of at least 25% in aggregate principal amount of the outstanding Notes shall have made written request to the Trustee, and offered indemnity reasonably satisfactory to the Trustee, to institute such proceeding as Trustee, and the Trustee shall not have received from the Holders of a majority in aggregate principal amount of the outstanding Notes a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. Such limitations do not apply, however, to a suit instituted by a Holder directly (as opposed to through the Trustee) for enforcement of payment of the principal of (and premium, if any) or interest on its Notes on or after the respective due dates expressed in such Notes.

In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding payment of the premium that the Company would have had to pay if the Company then had elected to redeem the Notes pursuant to the optional redemption provisions of the Indenture, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law upon the acceleration of the Notes.

The Company will be required to furnish to the Trustee annually a statement as to the performance of certain obligations under the Indenture and as to any default in such performance. The

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Company also is required to notify the Trustee if it becomes aware of the occurrence of any Default or Event of Default.

Amendment, Supplement and Waiver

Without the consent of any Holders, the Company, the Guarantors, the Trustee and the Collateral Agent, as applicable, at any time and from time to time, may enter into one or more indentures supplemental to, or otherwise amend, supplement or waive any provision of, the Indenture, the Notes, the Note Guarantees and the Security Documents for any of the following purposes:

(1) to evidence the succession of another Person to the Company or a Guarantor and the assumption by any such successor of the covenants of the Company or such Guarantor in the Indenture, the Notes, the Note Guarantees and the Security Documents, as applicable;

(2) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company or any Guarantor, or to make any change that would provide any additional rights or benefits to the Holders;

(3) to secure the Notes pursuant to the requirements of the covenant described under the caption " Certain Covenants Limitation on Liens" or to enter into, amend or supplement, or reflect the terms of, an Intercreditor Agreement;

(4) to comply with the requirements of the Commission in order to effect or maintain qualification of the Indenture under the Trust Indenture Act;

(5) to add additional Events of Default;

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

(7) to evidence and provide for the acceptance of appointment under the Indenture by a successor Trustee or Collateral Agent;

(8) to provide for or confirm the issuance of Additional Notes in accordance with the terms of the Indenture;

(9) to add to the Collateral securing the Notes,

(10) to add a Guarantor or to release a Guarantor in accordance with the Indenture;

(11) to cure any ambiguity, defect, omission, mistake or inconsistency;

(12) to make any other provisions with respect to matters or questions arising under the Indenture, *provided* that such actions pursuant to this clause shall not adversely affect the interests of the Holders in any material respect, as determined in good faith by the Board of Directors of the Company;

(13) to conform the text of the Indenture, the Notes or the Note Guarantees to any provision of this "Description of Exchange Notes" to the extent that the Trustee has received an Officers' Certificate stating that such text constitutes an unintended conflict with the description of the corresponding provision in this "Description of Exchange Notes;"

(14) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Collateral Agent for the benefit of the Trustee on behalf of the Holders, as additional security for the payment and performance of all or any portion of the Note Obligations under the Indenture and the Notes, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Collateral Agent pursuant to the Indenture, any of the Security Documents or otherwise; or

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(15) to provide for the release of Collateral from the Lien of the Indenture and the Security Documents when permitted or required by the Security Documents, or the Indenture.

With the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Notes, the Company, the Guarantors, the Trustee and the Collateral Agent, as applicable, may enter into an indenture or indentures supplemental to, or otherwise amend, supplement or waive, the Indenture, the Notes, the Note Guarantees or the Security Documents for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or the Notes or the Note Guarantees or the Security Documents, or of modifying in any manner the rights of the Holders under the Indenture, the Notes, the Note Guarantees or the Security Documents, including the definitions therein; *provided, however*, that no such supplemental indenture or other amendment, supplement or waiver shall, without the consent of the Holder of each outstanding Note affected thereby:

(1) change the Stated Maturity of any Note or of any installment of interest on any Note, or reduce the amount payable in respect of the principal thereof or the rate of interest thereon or any premium payable thereon, or reduce the amount that would be due and payable on acceleration of the maturity thereof, or change the place of payment where, or the coin or currency in which, any Note or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof, or change the date on which any Notes may be subject to redemption or reduce the Redemption Price therefor,

(2) reduce the percentage in aggregate principal amount of the outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of the Indenture or certain defaults thereunder and their consequences) provided for in the Indenture,

(3) modify the obligations of the Company to make Offers to Purchase upon a Change of Control Triggering Event or from the Excess Proceeds of Asset Sales if such modification was done after the occurrence of such Change of Control Triggering Event or such Asset Sale,

(4) subordinate, in right of payment, the Notes to any other Debt of the Company,

(5) modify any of the provisions of this paragraph or provisions relating to waiver of defaults or certain covenants, except to increase any such percentage required for such actions or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby, or

(6) release any Note Guarantees required to be maintained under the Indenture (other than in accordance with the terms of the Indenture).

In addition, any amendment or supplement to, or waiver of, the provisions of the Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes will require the consent of the Holders of at least 66²/₃% in aggregate principal amount of the Notes then outstanding.

The Holders of not less than a majority in aggregate principal amount of the outstanding Notes may on behalf of all Holders waive any past default under the Indenture and its consequences, except a default:

(1) in any payment in respect of the principal of (or premium, if any) or interest on any Notes (including any Note which is required to have been purchased pursuant to an Offer to Purchase which has been made by the Company), or

(2) in respect of a covenant or provision hereof which under the Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

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Satisfaction and Discharge of the Indenture; Defeasance

The Company and the Guarantors may terminate the obligations under the Indenture and the Security Documents (a "*Discharge*") when:

(1) either: (A) all Notes theretofore authenticated and delivered have been delivered to the Trustee for cancellation, or (B) all such Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable or (ii) will become due and payable within one year or are to be called for redemption within one year under irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire indebtedness on the Notes, not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest to the Stated Maturity or date of redemption;

(2) the Company has paid or caused to be paid all other sums then due and payable under the Indenture by the Company;

(3) the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(4) the Company has delivered irrevocable instructions to the Trustee under the Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be; and

(5) the Company has delivered to the Trustee an Officers' Certificate and an opinion of counsel reasonably acceptable to the Trustee, each stating that all conditions precedent under the Indenture relating to the Discharge have been complied with.

The Company may elect, at its option, to have its obligations discharged with respect to the outstanding Notes ("*legal defeasance*"). Such legal defeasance means that the Company and the Guarantors will be deemed to have paid and discharged the entire indebtedness represented by the outstanding Notes and the Note Guarantees, except for:

(1) the rights of Holders of such Notes to receive payments in respect of the principal of and any premium and interest on such Notes when payments are due,

(2) the Company's obligations with respect to such Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust,

(3) the rights, powers, trusts, duties and immunities of the Trustee,

(4) the Company's right of optional redemption, and

(5) the defeasance provisions of the Indenture.

In addition, the Company may elect, at its option, to have its obligations and the obligations of the Guarantors released with respect to certain covenants, including, without limitation, their obligation to make Offers to Purchase in connection with Asset Sales and any Change of Control Triggering Event, in the Indenture ("*covenant defeasance*") and any omission to comply with such obligation shall not constitute a Default or an Event of Default with respect to the Notes. In the event covenant defeasance occurs, certain events (not including non-payment, bankruptcy and insolvency events) described under "Events of Default" will no longer constitute an Event of Default with respect to the Notes.

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In order to exercise either legal defeasance or covenant defeasance with respect to outstanding Notes:

- (1) the Company must irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the Holders of such Notes: (A) money in an amount, or (B) U.S. government obligations, which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (C) a combination thereof, in each case sufficient without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, the entire indebtedness in respect of the principal of and premium, if any, and interest on such Notes on the Stated Maturity thereof or (if the Company has made irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name and at the expense of the Company) the redemption date thereof, as the case may be, in accordance with the terms of the Indenture and such Notes;
- (2) in the case of legal defeasance, the Company shall have delivered to the Trustee an opinion of counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of the Indenture, there has been a change in the applicable United States federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Notes will not recognize gain or loss for United States federal income tax purposes as a result of the deposit, legal defeasance and discharge to be effected with respect to such Notes and will be subject to United States federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, legal defeasance and discharge were not to occur;
- (3) in the case of covenant defeasance, the Company shall have delivered to the Trustee an opinion of counsel to the effect that the Holders of such outstanding Notes will not recognize gain or loss for United States federal income tax purposes as a result of the deposit and covenant defeasance to be effected with respect to such Notes and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and covenant defeasance were not to occur;
- (4) no Default or Event of Default with respect to the outstanding Notes shall have occurred and be continuing at the time of such deposit after giving effect thereto (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien to secure such borrowing);
- (5) such legal defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or material instrument (other than the Indenture) to which the Company is a party or by which the Company is bound; and
- (6) the Company shall have delivered to the Trustee an Officers' Certificate and an opinion of counsel, each stating that all conditions precedent with respect to such legal defeasance or covenant defeasance have been complied with.

In the event of a legal defeasance or a Discharge, under current law a Holder whose taxable year straddles the deposit of funds and the distribution in redemption to such Holder would generally be subject to tax on any gain (whether characterized as capital gain or market discount) in the year of deposit rather than in the year of receipt. In connection with a Discharge, in the event the Company becomes insolvent within the applicable preference period after the date of deposit, monies held for the payment of the Notes may be part of the bankruptcy estate of the Company, disbursement of such monies may be subject to the automatic stay of the bankruptcy code and monies disbursed to Holders

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may be subject to disgorgement in favor of the Company's estate. Similar results may apply upon the insolvency of the Company during the applicable preference period following the deposit of monies in connection with legal defeasance.

If the Company exercises legal defeasance or covenant defeasance, the Liens on the Collateral will be released.

Notwithstanding the foregoing, the opinion of counsel required by clause (2) above with respect to a legal defeasance need not to be delivered if all Notes not theretofore delivered to the Trustee for cancellation (x) have become due and payable, or (y) will become due and payable at Stated Maturity within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

The Trustee

Wilmington Trust Company, the Trustee under the Indenture, will be the initial paying agent and registrar for the Notes. The Trustee from time to time may extend credit to the Company in the normal course of business. Except during the continuance of an Event of Default, the Trustee will perform only such duties as are specifically set forth in the Indenture. During the continuance of an Event of Default that has not been cured or waived, the Trustee will 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 such person's own affairs.

The Indenture and the Trust Indenture Act contain certain limitations on the rights of the Trustee, should it become a creditor of the Company, to obtain payment of claims in certain cases or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; *however*, if it acquires any "conflicting interest" (as defined in the Trust Indenture Act) it must eliminate such conflict within 90 days, apply to the Commission for permission to continue or resign.

The Holders of a majority in principal amount of the outstanding Notes will have the right to 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 the Trustee, subject to certain exceptions. The Indenture provides that in case an Event of 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 such person's own affairs. Subject to such provisions, the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of any of the Holders pursuant to the Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

The Indenture provides that neither the Trustee nor the Collateral Agent shall be responsible for the existence, genuineness, value or protection of any Collateral (except for the safe custody of Collateral in its possession and the accounting for Trust Monies actually received by it in accordance with the terms of the Indenture), for the legality, effectiveness or sufficiency of any Security Document, or for the creation, perfection, priority, sufficiency or protection of any Note Lien.

No Personal Liability of Stockholders, Partners, Officers or Directors

No director, officer, employee, stockholder, member, general or limited partner or incorporator, past, present or future, of the Company or any of its Subsidiaries, as such or in such capacity, shall have any personal liability for any obligations of the Company under the Notes, any Note Guarantee or the Indenture or the Security Documents by reason of his, her or its status as such director, officer, employee, stockholder, member, general or limited partner or incorporator.

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Governing Law

The Indenture, the Notes and the Pledge Agreement are governed by, and will be construed in accordance with, the laws of the State of New York.

Certain Definitions

Set forth below is a summary of certain of the defined terms used in the Indenture. Reference is made to the Indenture for the full definition of all such terms, as well as any capitalized term used herein for which no definition is provided.

"*Acquired Debt*" means Debt (i) of a Person (including an Unrestricted Subsidiary) existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person. Acquired Debt shall be deemed to have been Incurred, with respect to clause (i) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (ii) of the preceding sentence, on the date of consummation of such acquisition of assets.

"*Affiliate*" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings that correspond to the foregoing. For purposes of the covenant described under the caption " Certain Covenants Limitation on Transactions with Affiliates," (i) any Person directly or indirectly owning 10% or more of the outstanding Voting Interests of any other Person will be deemed to be an Affiliate of such other Person and (ii) any Person who is a Permitted Holder will be deemed to be an Affiliate of the Company.

"*Applicable Premium*" means, with respect to any Note on any redemption date, the greater of (i) 1.0% of the principal amount of such Note and (ii) the excess, if any, of: (1) the present value at such redemption date of (A) the Redemption Price of such Note on May 1, 2014 (such Redemption Price being set forth in the table appearing under the caption " Optional Redemption") plus (B) all required interest payments due on such Note during the period from such redemption date through May 1, 2014 (excluding accrued but unpaid interest), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points over (2) the principal amount of such Note.

"*Asset Acquisition*" means:

- (a) an Investment by the Company or any Restricted Subsidiary in any other Person pursuant to which such Person shall become a Restricted Subsidiary, or shall be merged with or into the Company or any Restricted Subsidiary; or
- (b) the acquisition by the Company or any Restricted Subsidiary of the assets of any Person which constitute all or substantially all of the assets of such Person, any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business and consistent with past practices.

"*Asset Sale*" means any transfer, conveyance, sale, lease or other disposition (including, without limitation, dispositions pursuant to any consolidation or merger) by the Company or any of its Restricted Subsidiaries to any Person (other than to the Company or one or more of its Restricted Subsidiaries) in any single transaction or series of transactions of:

- (i) Capital Interests in another Person (other than directors' qualifying shares or shares or interests required to be held by foreign nationals pursuant to local law); or

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(ii) any other property or assets (other than in the normal course of business, including any sale or other disposition of obsolete or permanently retired equipment);

provided, however, that the term "Asset Sale" shall exclude:

(a) a transaction that constitutes a Change of Control Triggering Event or any asset disposition permitted by the covenant described under the caption " Certain Covenants Consolidation, Merger, Conveyance, Transfer or Lease" that constitutes a disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole;

(b) any transfer, conveyance, sale, lease or other disposition of property or assets, including Capital Interests, the gross proceeds of which (exclusive of indemnities) do not exceed in any one or related series of transactions \$5.0 million;

(c) sales or other dispositions of cash or Eligible Cash Equivalents;

(d) sales of interests in Unrestricted Subsidiaries;

(e) the sale and leaseback of any assets within 90 days of the acquisition thereof;

(f) the disposition of assets that, in the good faith judgment of the Board of Directors of the Company, are surplus or are no longer used or useful in the business of such entity;

(g) a Restricted Payment or Permitted Investment that is otherwise permitted by the Indenture;

(h) any trade-in of equipment in exchange for other equipment; *provided* that in the good faith judgment of the Company, the Company or such Restricted Subsidiary receives equipment having a Fair Market Value equal to or greater than the equipment being traded in;

(i) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien);

(j) leases or subleases in the ordinary course of business to third persons not interfering in any material respect with the business of the Company or any of its Restricted Subsidiaries and otherwise in accordance with the provisions of the Indenture;

(k) any disposition by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary that is a Guarantor;

(l) dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business and consistent with past practice;

(m) licensing of intellectual property in accordance with industry practice in the ordinary course of business;

(n) any transfer of accounts receivable, or a fractional undivided interest therein, by a Receivable Subsidiary in a Qualified Receivables Transaction; or

(o) sales of accounts receivable to a Receivable Subsidiary pursuant to a Qualified Receivables Transaction for the Fair Market Value thereof, including cash in an amount at least equal to 75% of the Fair Market Value thereof (for the purposes of this clause (o), Purchase Money Notes will be deemed to be cash).

For purposes of this definition, any series of related transactions that, if effected as a single transaction, would constitute an Asset Sale, shall be deemed to be a single Asset Sale effected when the last such transaction which is a part thereof is effected.

"*Attributable Debt*" in respect of a Sale and Leaseback Transaction means, at the time of determination, the present value (discounted at the rate of interest implicit in such transaction) of the

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total obligations of the lessee for 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 or may be extended).

"*Average Life*" means, as of any date of determination, with respect to any Debt, the quotient obtained by dividing (i) the sum of the products of (x) the number of years from the date of determination to the dates of each successive scheduled principal payment (including any sinking fund or mandatory redemption payment requirements) of such Debt multiplied by (y) the amount of such principal payment by (ii) the sum of all such principal payments.

"*Board of Directors*" means (i) with respect to the Company, its board of directors, (ii) with respect to a corporation, the board of directors of such corporation, (iii) with respect to a limited liability company, the board of managers of such limited liability company, (iv) with respect to a partnership, the board of directors of the general partner of such partnership and (v) with respect to any other entity, the functional equivalent of the foregoing in respect of such entity or, in each case, any duly authorized committee thereof.

"*Capital Interests*" in any Person means any and all shares, interests (including Preferred Interests), participations or other equivalents in the equity interest (however designated) in such Person and any rights (other than debt securities convertible into an equity interest), warrants or options to acquire an equity interest in such Person.

"*Capital Lease Obligations*" means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of the covenant described under the caption " Certain Covenants Limitation on Liens," a Capital Lease Obligation shall be deemed secured by a Lien on the property being leased.

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

(a) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) that any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the ultimate "beneficial owner" (as such term is used in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (a) such person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the Voting Interests in the Company; or

(b) the Company or any Restricted Subsidiary sells, conveys, transfers or leases (either in one transaction or a series of related transactions) all or substantially all of the assets of the Company and its Restricted Subsidiaries (determined on a consolidated basis) to any Person, or the Company merges or consolidates with, a Person other than (x) a Restricted Subsidiary of the Company or (y) a Successor Entity in which a majority or more of the voting power of the Voting Interests is held by the Permitted Holders.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Ratings Event.

"*Code*" means the Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated thereunder.

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"*Collateral Agent*" means Wilmington Trust Company or other financial institution or entity which, in the determination of the Company is acceptable and may include, without limitation, an entity affiliated with the initial purchasers, any lenders or an entity affiliated with the lenders under any Credit Facility or an affiliate thereof, in any case, not in its individual capacity, but solely as Collateral Agent under the Security Documents.

"*Commission*" means the U.S. Securities and Exchange Commission and any successor thereto.

"*Common Interests*" of any Person means Capital Interests in such Person that do not rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to Capital Interests of any other class in such Person.

"*Consolidated Cash Flow Available for Fixed Charges*" means, with respect to any Person for any period:

(i) the sum of, without duplication, the amounts for such period, taken as a single accounting period, of:

(a) Consolidated Net Income;

(b) Consolidated Non-cash Charges;

(c) Consolidated Interest Expense to the extent the same was deducted in computing Consolidated Net Income;

(d) Consolidated Income Tax Expense (other than income tax expense (either positive or negative) attributable to extraordinary gains or losses);

(e) any expenses or charges related to any equity offering, Permitted Investment, recapitalization or Debt permitted to be Incurred by the Indenture (whether or not successful) or related to this offering of the Notes;

(f) facility closure and severance costs and charges;

(g) restructuring expenses and charges;

(h) acquisition integration expenses and charges; and

(i) the Historical Costs and Expenses; and

(ii) *less* non-cash items increasing Consolidated Net Income for such period, other than (a) the accrual of revenue consistent with past practice, and (b) reversals of prior accruals or reserves for cash items previously excluded in the calculation of Consolidated Non-cash Charges.

"*Consolidated Fixed Charge Coverage Ratio*" means, with respect to any Person, the ratio of the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of such Person for the four full fiscal quarters, treated as one period, for which financial information in respect thereof is available immediately preceding the date of the transaction (the "*Transaction Date*") giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (such four full fiscal quarter period being referred to herein as the "*Four Quarter Period*") to the aggregate amount of Consolidated Fixed Charges of such Person for the Four Quarter Period. For purposes of this definition, Consolidated Cash Flow Available for Fixed Charges and Consolidated Fixed Charges shall be calculated after giving effect, on a pro forma basis for the period of such calculation, to:

(a) the Incurrence of any Debt (other than working capital borrowings under any revolving credit facility in the ordinary course of business) of the Company or any Restricted Subsidiary (and the application of the proceeds thereof) and any repayment of other Debt (other than working capital borrowings under any revolving credit facility in the ordinary course of business) occurring during the

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Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such Incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four Quarter Period; and

(b) any Asset Sale or Asset Acquisition (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of the Company or any Restricted Subsidiary (including any Person who becomes a Restricted Subsidiary as a result of such Asset Acquisition) incurring Acquired Debt and also including any Consolidated Cash Flow Available for Fixed Charges associated with any such Asset Acquisition or Asset Sale) occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such Asset Sale or Asset Acquisition (including the Incurrence of, or assumption or liability for, any such Debt or Acquired Debt) occurred on the first day of the Four Quarter Period.

For purposes of this definition, pro forma calculations shall be made in accordance with Article 11 of Regulation S-X, except that such pro forma calculations may also include operating expense reductions for such period resulting from any Asset Sale or other dispositions or Asset Acquisition, investment, merger, consolidation or discontinued operation (as determined in accordance with GAAP) for which pro forma effect is being given that (A) have been realized or (B) for which steps have been taken or are reasonably expected to be taken within six months of the date of such transaction and are supportable and quantifiable and, in each case, including, but not limited to, (a) reduction in personnel expenses, (b) reduction of costs related to administrative functions, (c) reduction of costs related to leased or owned properties and (d) reductions from the consolidation of operations and streamlining of corporate overhead, provided that, in either case, such adjustments are set forth in an Officers' Certificate signed by the Company's principal financial officer and one other officer of the Company that states (i) the amount of such adjustment or adjustments and (ii) that such adjustment or adjustments are based on the reasonable good faith belief of the officers executing such Officers' Certificate at the time of such execution.

In calculating Consolidated Fixed Charges for purposes of determining the denominator (but not the numerator) of this Consolidated Fixed Charge Coverage Ratio:

(i) interest on outstanding Debt determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Debt in effect on the Transaction Date;

(ii) if interest on any Debt actually Incurred on the Transaction Date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the Transaction Date will be deemed to have been in effect during the Four Quarter Period; and

(iii) notwithstanding clause (i) or (ii) above, interest on Debt determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Hedging Obligations, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of these agreements.

"Consolidated Fixed Charges" means, with respect to any Person for any period, the sum of, without duplication, the amounts for such period of:

(i) Consolidated Interest Expense; and

(ii) the product of (a) all dividends and other distributions paid or accrued during such period in respect of Redeemable Capital Interests of such Person and its Restricted Subsidiaries, *times* (b) a fraction, the numerator of which is one and the denominator of which is one *minus* the then

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current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Income Tax Expense*" means, with respect to any Person for any period, the provision for federal, state, local and foreign income taxes of such Person and its Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP.

"*Consolidated Interest Expense*" means, with respect to any Person for any period, without duplication, the sum of:

(i) the interest expense of such Person and its Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP, including, without limitation:

- (a) any amortization of debt discount;
- (b) the net cost under Hedging Obligations related to interest rates (including any amortization of discounts);
- (c) the interest portion of any deferred payment obligation;
- (d) all commissions, discounts and other fees and charges owed with respect to letters of credit, bankers' acceptance financing or similar activities; and
- (e) all accrued interest;

(ii) the interest component of Capital Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Restricted Subsidiaries during such period determined on a consolidated basis in accordance with GAAP;

(iii) the interest expense on any Debt guaranteed by such Person and its Restricted Subsidiaries; and

(iv) all capitalized interest of such Person and its Restricted Subsidiaries for such period;

less interest income of such Person and its Restricted Subsidiaries for such period; *provided, however*, that Consolidated Interest Expense will exclude the amortization or write-off of debt issuance costs and deferred financing fees, commissions, fees and expenses.

"*Consolidated Net Income*" means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Restricted Subsidiaries for such period as determined in accordance with GAAP, adjusted, to the extent included in calculating such net income, by excluding, without duplication:

(i) all extraordinary gains or losses (net of fees and expense relating to the transaction giving rise thereto), income, expenses or charges;

(ii) the portion of net income of such Person and its Restricted Subsidiaries allocable to minority interest in unconsolidated Persons or Investments in Unrestricted Subsidiaries to the extent that cash dividends or distributions have not actually been received by such Person or one of its Restricted Subsidiaries;

(iii) gains or losses in respect of any Asset Sales by such Person or one of its Restricted Subsidiaries (net of fees and expenses relating to the transaction giving rise thereto), on an after-tax basis;

(iv) the net income (loss) from any disposed or discontinued operations or any net gains or losses on disposed or discontinued operations, on an after-tax basis;

(v) solely for purposes of determining the amount available for Restricted Payments under clause (c) of the first paragraph of " Certain Covenants Limitation on Restricted Payments," the net

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income of any Restricted Subsidiary (other than a Guarantor) of such Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulations applicable to that Restricted Subsidiary or its stockholders;

- (vi) any gain or loss realized as a result of the cumulative effect of a change in accounting principles;
- (vii) any fees and expenses paid in connection with the issuance of the Notes;
- (viii) non-cash compensation expense incurred with any issuance of equity interests to an employee of such Person or any Restricted Subsidiary;
- (ix) any net after-tax gains or losses attributable to the early extinguishment of Debt;
- (x) any non-cash impairment charges or asset write-off or write-down recorded in accordance with GAAP;
- (xi) any non-cash losses and expenses resulting from changes in the exercise price of the warrant issued to K Financing, LLC in June 2009, and subsequently transferred to K Equity, LLC, an affiliate of K Financing, LLC, to purchase shares of the Company's common stock;
- (xii) non-cash gains, losses, income and expenses resulting from fair value accounting required by GAAP; and
- (xiii) any foreign currency translation gains or losses.

"Consolidated Non-cash Charges" means, with respect to any Person for any period, the aggregate depreciation, amortization (including amortization of goodwill and other intangibles) and other non-cash expenses of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charges constituting an extraordinary item or loss and excluding any such charges constituting an extraordinary item or loss or any charge which requires an accrual of or a reserve for cash charges for any future period).

"Credit Facility" means, collectively, one or more debt facilities or other financing arrangements with banks or other lenders providing for revolving credit loans, term loans, letters of credit or overdraft or factoring facilities, in each case, as amended, refinanced or otherwise restructured, in whole or in part from time to time, including by or pursuant to any agreement or instrument that increases the amount of available borrowings thereunder or adds Subsidiaries of the Company as additional borrowers or guarantors thereunder, in each case with respect to such agreement or agreements or any successor or replacement agreement or agreements and whether by the same or any other agent, lender or group of lenders.

"Debt" means at any time (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person, or non-recourse, and whether or not contingent, the following: (i) all indebtedness of such Person for money borrowed or for the deferred purchase price of property, excluding any trade payables or other current liabilities incurred in the normal course of business; (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments; (iii) all obligations of such Person with respect to letters of credit (other than letters of credit that are secured by cash or Eligible Cash Equivalents), bankers' acceptances or similar facilities issued for the account of such Person; (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property or assets acquired by such Person (even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property or assets); (v) all Capital Lease Obligations of such

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Person; (vi) the maximum fixed redemption or repurchase price of Redeemable Capital Interests in such Person (or, if such Person is not the Company or a Guarantor, the maximum fixed redemption or repurchase price of any Preferred Interests in such Person) at the time of determination; (vii) any Hedging Obligations of such Person at the time of determination; (viii) Attributable Debt with respect to any Sale and Leaseback Transaction to which such Person is a party; and (ix) all obligations of the types referred to in clauses (i) through (viii) of this definition of another Person and all dividends and other distributions of another Person, the payment of which, in either case, (A) such Person has Guaranteed or (B) is secured by (or the holder of such Debt or the recipient of such dividends or other distributions has an existing right, whether contingent or otherwise, to be secured by) any Lien upon the property or other assets of such Person, even though such Person has not assumed or become liable for the payment of such Debt, dividends or other distributions. For purposes of the foregoing: (a) the maximum fixed redemption or repurchase price of any Redeemable Capital Interests or Preferred Interests that do not have a fixed redemption or repurchase price shall be calculated in accordance with the terms of such Redeemable Capital Interests or such Preferred Interests as if such Redeemable Capital Interests or such Preferred Interests were redeemed or repurchased on any date on which Debt shall be required to be determined pursuant to the Indenture; *provided, however*, that, if such Redeemable Capital Interests or such Preferred Interests are not then permitted to be redeemed or repurchased, the redemption or repurchase price shall be the book value of such Redeemable Capital Interests or such Preferred Interests; (b) the amount of Debt of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligations, of any contingent obligations at such date; *provided, however*, that the amount outstanding at any time of any Debt issued with original issue discount is the principal amount of such Debt less the remaining unamortized portion of the original issue discount of such Debt at such time as determined in conformity with GAAP, but such Debt shall be deemed Incurred only as of the date of original issuance thereof; (c) the amount of any Debt described in clause (ix)(A) above shall be the maximum liability under any such Guarantee; (d) the amount of any Debt described in clause (ix)(B) above shall be the lesser of (I) the maximum amount of the obligations so secured and (II) the Fair Market Value of such property or other assets; and (e) interest, fees, premium, and expenses and additional payments, if any, will not constitute Debt.

Notwithstanding the foregoing, in connection with the purchase by the Company or any Restricted Subsidiary of any business, the term "Debt" will exclude (x) customary indemnification obligations and (y) post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment is otherwise contingent; *provided, however*, that, such amount would not be required to be reflected on the face of a balance sheet prepared in accordance with GAAP.

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

"*Designated Non-cash Consideration*" means the Fair Market Value of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officers' Certificate, setting forth the basis of such valuation, executed by the principal financial officer and another officer of the Company, less the amount of cash or Eligible Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

"*Domestic Restricted Subsidiary*" means any Restricted Subsidiary that is formed or otherwise incorporated in the United States or a State thereof or the District of Columbia or that Guarantees or otherwise provides direct credit support for any Debt of the Company.

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"*Eligible Bank*" means a bank or trust company that (i) is organized and existing under the laws of the United States of America, or any state, territory or possession thereof, or any country that is a member of the Organization for Economic Cooperation and Development, (ii) as of the time of the making or acquisition of an Investment in such bank or trust company, has combined capital and surplus in excess of \$250.0 million and (iii) the senior Debt of which is rated at least "A-2" by Moody's or at least "A" by Standard & Poor's (or an equivalent rating from a comparable foreign rating agency).

"*Eligible Cash Equivalents*" means any of the following Investments: (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) maturing not more than one year after the date of acquisition; (ii) time deposits in and certificates of deposit of any Eligible Bank, *provided* that such Investments have a maturity date not more than two years after date of acquisition and that the Average Life of all such Investments is one year or less from the respective dates of acquisition; (iii) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (i) above entered into with any Eligible Bank; (iv) direct obligations issued by any state of the United States or any political subdivision or public instrumentality thereof, or any country that is a member of the Organization for Economic Cooperation and Development, *provided* that such Investments mature, or are subject to tender at the option of the holder thereof, within 365 days after the date of acquisition and, at the time of acquisition, have a rating of at least "A" from Standard & Poor's or "A-2" from Moody's (or an equivalent rating by any other nationally recognized rating agency or a comparable foreign rating agency); (v) commercial paper of any Person other than an Affiliate of the Company and other than structured investment vehicles, *provided* that such Investments have a rating of at least "P-2" by Moody's or at least "A-2" by Standard & Poor's and mature within 180 days after the date of acquisition; (vi) overnight and demand deposits in and bankers' acceptances of any Eligible Bank and demand deposits in any bank or trust company to the extent insured by the Federal Deposit Insurance Corporation against the Bank Insurance Fund; (vii) money market funds substantially all of the assets of which comprise Investments of the types described in clauses (i) through (vi); and (viii) instruments equivalent to those referred to in clauses (i) through (vi) above or funds equivalent to those referred to in clause (vii) above denominated in Euros or any other foreign currency comparable in credit quality and tender to those referred to in such clauses and customarily used by corporations for cash management purposes in jurisdictions outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction, all as determined in good faith by the Company.

"*ERISA*" means the Employee Retirement Income Security Act of 1974 and all rules and regulations from time to time promulgated thereunder.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Expiration Date*" has the meaning set forth in the definition of "Offer to Purchase."

"*Fair Market Value*" means, with respect to any asset or the consideration received or paid in any transaction or series of transactions, the fair market value thereof as determined in good faith by the Board of Directors of the Company. In the case of a transaction between the Company or a Restricted Subsidiary, on the one hand, and a Receivable Subsidiary, on the other hand, if the Board of Directors determines in its sole discretion that such determination is appropriate, a determination as to Fair Market Value may be made at the commencement of the transaction and be applicable to all dealings between the Receivable Subsidiary and the Company or such Restricted Subsidiary during the course of such transaction.

"*Foreign Law Security Documents*" means the Singapore law-governed Share Charge between the Collateral Agent and Kemet Electronics Corporation, the Mexican law-governed Stock Pledge Agreement among Kemet Electronics Corporation, the Collateral Agent and Kemet de México, S.A. de C.V. and the Italian law-governed Pledge Agreement Over Shares, each being executed in connection with the issuance of the Notes pursuant to the Indenture.

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"*Foreign Restricted Subsidiary*" means any Restricted Subsidiary other than a Domestic Restricted Subsidiary.

"*Four Quarter Period*" has the meaning set forth in the definition of "Consolidated Fixed Charge Coverage Ratio."

"*GAAP*" means generally accepted accounting principles in the United States, consistently applied, as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect from time to time.

"*Guarantee*" means, as applied to any Debt of another Person, (i) a guarantee (other than by endorsement of negotiable instruments for collection in the normal course of business), direct or indirect, in any manner, of any part or all of such Debt, (ii) any direct or indirect obligation, contingent or otherwise, of a Person guaranteeing or having the effect of guaranteeing the Debt of any other Person in any manner and (iii) an agreement of a Person, direct or indirect, contingent or otherwise, the practical effect of which is to assure in any way the payment or performance (or payment of damages in the event of non-payment or non-performance) of all or any part of such Debt of another Person (and "Guaranteed" and "Guaranteeing" shall have meanings that correspond to the foregoing).

"*Guarantor*" means any Person that executes the Indenture as a Guarantor or executes a Note Guarantee or supplemental indenture in accordance with the provisions of the Indenture and their respective successors and assigns.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any interest rate agreement, currency agreement or commodity agreement.

"*Historical Costs and Expenses*" means public company costs, merger and proxy related expenses, workers compensation reserve adjustments, legal settlements and historical costs associated with closed facilities to the extent incurred prior to the Issue Date and, in each case, on a basis consistent with the calculation of Adjusted EBITDA as set forth in the offering memorandum related to initial offer and sale of the Notes.

"*Holder*" means a Person in whose name a Note is registered in the security register.

"*Immaterial Subsidiary*" means, as of any date, any Restricted Subsidiary whose total assets, as of such date, are less than \$100,000 and whose total revenues for the most recent 12-month period do not exceed \$100,000; *provided* that a Restricted Subsidiary will not be considered to be an Immaterial Subsidiary if it, directly or indirectly, Guarantees or otherwise provides direct credit support for any Debt of the Company.

"*Incur*" means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or other obligation on the balance sheet of such Person; *provided, however*, that a change in GAAP that results in an obligation of such Person that exists at such time becoming Debt shall not be deemed an Incurrence of such Debt. Debt otherwise Incurred by a Person before it becomes a Subsidiary of the Company shall be deemed to be Incurred at the time at which such Person becomes a Subsidiary of the Company. "Incurrence," "Incurred," "Incurable" and "Incurring" shall have meanings that correspond to the foregoing. A Guarantee by the Company or a Restricted Subsidiary of

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Debt Incurred by the Company or a Restricted Subsidiary, as applicable, shall not be a separate Incurrence of Debt. In addition, the following shall not be deemed a separate Incurrence of Debt:

- (1) amortization of debt discount or accretion of principal with respect to a non-interest bearing or other discount security;
- (2) the payment of regularly scheduled interest in the form of additional Debt of the same instrument or the payment of regularly scheduled dividends on Capital Interests in the form of additional Capital Interests of the same class and with the same terms;
- (3) the obligation to pay a premium in respect of Debt arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Debt; and
- (4) unrealized losses or charges in respect of Hedging Obligations.

"*Initial Purchasers*" means Banc of America Securities LLC, KeyBank Capital Markets Inc., UBS Securities LLC and such other initial purchasers (if any) party to the purchase agreement entered into in connection with the offer and sale of the Notes on the Issue Date.

"*Intercreditor Agreement*" means an intercreditor agreement among the Collateral Agent, the collateral agent (or entity performing a similar function) under a Credit Facility and any other parties thereto that provides for the allocation of rights among the Collateral Agent and such collateral agent (or other entity) under such Credit Facility with respect to their respective interests in the Collateral and the enforcement provisions relating thereto, in form and substance satisfactory to the Collateral Agent.

"*Investment*" by any Person means any direct or indirect loan, advance (or other extension of credit) or capital contribution to (by means of any transfer of cash or other property or assets to another Person or any other payments for property or services for the account or use of another Person) another Person, including, without limitation, the following: (i) the purchase or acquisition of any Capital Interest or other evidence of beneficial ownership in another Person; (ii) the purchase, acquisition or Guarantee of the obligations of another Person or the issuance of a "keep-well" with respect thereto; and (iii) the purchase or acquisition of the business or assets of another Person, but shall exclude: (a) accounts receivable and other extensions of trade credit on commercially reasonable terms in accordance with normal trade practices; (b) the acquisition of property and assets from suppliers and other vendors in the normal course of business; (c) prepaid expenses and workers' compensation, utility, lease and similar deposits, in the normal course of business; and (d) commission, travel and similar advances to officers and employees in the ordinary course of business.

"*Investment Grade Rating*" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by Standard & Poor's, or, in either case, an equivalent rating by any other Rating Agency.

"*Issue Date*" means May 5, 2010, the date on which the initial \$230.0 million in aggregate principal amount of the Notes is originally issued under the Indenture.

"*Lien*" means, with respect to any property or other asset, any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, assignment, deposit arrangement, security interest, lien (statutory or otherwise), charge, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or other asset (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

"*Moody's*" means Moody's Investors Service, Inc. and any successor to its rating agency business.

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"*Net Cash Proceeds*" means, with respect to Asset Sales of any Person, cash and Eligible Cash Equivalents received, net of: (i) all reasonable out-of-pocket costs and expenses of such Person incurred in connection with such a sale, including, without limitation, all legal, accounting, title and recording tax expenses, commissions and other fees and expenses incurred and all federal, state, foreign and local taxes arising in connection with such an Asset Sale that are paid or required to be accrued as a liability under GAAP by such Person; (ii) except in the case of Liens ranking junior to the Liens securing the Notes, all payments made by such Person on any Debt that is secured by such properties or other assets in accordance with the terms of any Lien upon or with respect to such properties or other assets or that must, by the terms of such Lien or such Debt, or in order to obtain a necessary consent to such transaction or by applicable law, be repaid to any other Person (other than the Company or a Restricted Subsidiary thereof) in connection with such Asset Sale; and (iii) all contractually required distributions and other payments made to minority interest holders in Restricted Subsidiaries of such Person as a result of such transaction; *provided, however*, that: (a) in the event that any consideration for an Asset Sale (which would otherwise constitute Net Cash Proceeds) is required by (I) contract to be held in escrow pending determination of whether a purchase price adjustment will be made or (II) GAAP to be reserved against other liabilities in connection with such Asset Sale, such consideration (or any portion thereof) shall become Net Cash Proceeds only at such time as it is released to such Person from escrow or otherwise; and (b) any non-cash consideration (including Designated Non-cash Consideration) received in connection with any transaction, which is subsequently converted to cash or Eligible Cash Equivalents, shall become Net Cash Proceeds only at such time as it is so converted.

"*Non-Recourse Receivable Subsidiary Indebtedness*" has the meaning set forth in the definition of "Receivable Subsidiary."

"*Note Liens*" means all Liens in favor of the Collateral Agent on Collateral securing the Note Obligations.

"*Note Obligations*" means the Debt Incurred and Obligations under the Senior Note Documents.

"*Obligations*" means any principal, premium, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Debt.

"*Offer*" has the meaning set forth in the definition of "Offer to Purchase."

"*Offer to Purchase*" means a written offer (the "*Offer*") sent by the Company by first class mail (or such other means reasonably likely to be delivered faster than first class mail), postage prepaid, to each Holder at his address appearing in the security register on the date of the Offer, offering to purchase up to the aggregate principal amount of Notes set forth in such Offer at the purchase price set forth in such Offer (as determined pursuant to the Indenture). Unless otherwise required by applicable law, the offer shall specify an expiration date (the "*Expiration Date*") of the Offer to Purchase which shall be, subject to any contrary requirements of applicable law, not less than 30 days or more than 60 days after the date of mailing of such Offer and a settlement date (the "*Purchase Date*") for purchase of Notes within five business days after the Expiration Date. The Company shall notify the Trustee at least 15 days (or such shorter period as is acceptable to the Trustee) prior to the mailing of the Offer of the Company's obligation to make an Offer to Purchase, and the Offer shall be mailed by the Company or, at the Company's request, by the Trustee in the name and at the expense

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of the Company. The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase. The Offer shall also state:

- (1) the section of the Indenture pursuant to which the Offer to Purchase is being made;
- (2) the Expiration Date and the Purchase Date;
- (3) the aggregate principal amount of the outstanding Notes offered to be purchased pursuant to the Offer to Purchase (including, if less than 100%, the manner by which such amount has been determined pursuant to Indenture covenants requiring the Offer to Purchase) (the "*Purchase Amount*");
- (4) the purchase price to be paid by the Company for each \$1,000 principal amount of Notes accepted for payment (as specified pursuant to the Indenture) (the "*Purchase Price*");
- (5) that the Holder may tender all or any portion of the Notes registered in the name of such Holder and that any portion of a Note tendered must be tendered in a minimum amount of \$1,000 principal amount;
- (6) the place or places where Notes are to be surrendered for tender pursuant to the Offer to Purchase, if applicable;
- (7) that, unless the Company defaults in making such purchase, any Note accepted for purchase pursuant to the Offer to Purchase will cease to accrue interest on and after the Purchase Date, but that any Note not tendered or tendered but not purchased by the Company pursuant to the Offer to Purchase will continue to accrue interest at the same rate;
- (8) that, on the Purchase Date, the Purchase Price will become due and payable upon each Note accepted for payment pursuant to the Offer to Purchase;
- (9) that each Holder electing to tender a Note pursuant to the Offer to Purchase will be required to surrender such Note or cause such Note to be surrendered at the place or places set forth in the Offer prior to the close of business on the Expiration Date (such Note being, if the Company or the Trustee so requires, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing);
- (10) that Holders will be entitled to withdraw all or any portion of Notes tendered if the Company (or its paying agent) receives, not later than the close of business on the Expiration Date, a facsimile transmission or letter setting forth the name of the Holder, the aggregate principal amount of the Notes the Holder tendered, the certificate number of the Note the Holder tendered and a statement that such Holder is withdrawing all or a portion of his tender;
- (11) that (a) if Notes having an aggregate principal amount less than or equal to the Purchase Amount are duly tendered and not withdrawn pursuant to the Offer to Purchase, the Company shall purchase all such Notes and (b) if Notes having an aggregate principal amount in excess of the Purchase Amount are tendered and not withdrawn pursuant to the Offer to Purchase, the Company shall purchase Notes having an aggregate principal amount equal to the Purchase Amount on a pro rata basis (with such adjustments as may be deemed appropriate so that only Notes in denominations of \$2,000 principal amount or integral multiples of \$1,000 in excess thereof shall remain outstanding following such purchase); and
- (12) if applicable, that, in the case of any Holder whose Note is purchased only in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in the aggregate principal amount equal to and in exchange for the unpurchased portion of the aggregate principal amount of the Notes so tendered.

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"*Officers' Certificate*" means a certificate signed by two officers of the Company or a Guarantor, as applicable, one of whom must be the principal executive officer, the principal financial officer or the principal accounting officer of the Company or such Guarantor, as applicable.

"*Permitted Business*" means any business similar in nature to any business conducted by the Company and the Restricted Subsidiaries on the Issue Date and any business reasonably ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted by the Company and the Restricted Subsidiaries on the Issue Date, in each case, as determined in good faith by the Board of Directors of the Company.

"*Permitted Collateral Liens*" means the Liens permitted by clauses (b) (which Liens shall be (i) equal and ratable with, or junior to, the Note Liens and (ii) subject to an Intercreditor Agreement), (c), (d), (e), (f), (p) or (t) of the definition of "Permitted Liens."

"*Permitted Debt*" means:

(i) Debt Incurred pursuant to one or more Credit Facilities in an aggregate principal amount at any one time outstanding not to exceed (x) the greatest of (1) \$75.0 million, (2) the sum of (A) 85% of the net book value of accounts receivable, plus (B) 60% of the net book value of the inventory, in each case of the Company and the Restricted Subsidiaries, calculated on a consolidated basis in accordance with GAAP and (3) an amount equal to (A) the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of the Company for the four full fiscal quarters, treated as one period, for which financial information in respect thereof is available immediately preceding the date on which such Debt is Incurred, multiplied by (B) 1.5, minus (y)(1) any amounts Incurred and outstanding pursuant to a Qualified Receivables Transaction permitted under clause (xiv) below and (2) with respect to clause (x)(1) above only, any amount used to permanently repay such Obligations (and, if the Obligations repaid are revolving credit Debt, permanently reduce commitments with respect thereto) pursuant to the covenant described under the caption " Certain Covenants Limitation on Asset Sales;"

(ii) Debt outstanding under the Notes (excluding any Additional Notes) on the Issue Date (and any Exchange Notes pursuant to the Registration Rights Agreement) and contribution, indemnification and reimbursement obligations owed by the Company or any Guarantor to any of the other of them in respect of amounts paid or payable on such Notes;

(iii) Guarantees of the Notes (and of any Exchange Notes pursuant to the Registration Rights Agreement);

(iv) Debt of the Company or any Restricted Subsidiary outstanding at the time of the Issue Date (other than clauses (i), (ii) or (iii) above), including the Company's existing 2.25% Convertible Senior Notes due 2026 (other than any such notes purchased in the tender offer therefor being conducted concurrently with the offering of the Notes);

(v) Debt owed to and held by the Company or a Restricted Subsidiary, *provided* that (A) if such Debt is owed by the Company or a Guarantor to a Restricted Subsidiary that is not a Guarantor, such Debt must be expressly subordinated in right of payment to, in the case of the Company, the Notes or, in the case of a Guarantor, such Guarantor's Note Guarantee and (B) if for any reason such Debt ceases to be held by the Company or a Restricted Subsidiary, as applicable, such Debt shall cease to be Permitted Debt and the Company or such Restricted Subsidiary shall be deemed to have Incurred Debt not permitted by this clause (v);

(vi) Guarantees Incurred by the Company of Debt of a Restricted Subsidiary otherwise permitted to be incurred under the Indenture;

(vii) Guarantees by any Restricted Subsidiary of Debt of the Company or any Restricted Subsidiary, including Guarantees by any Restricted Subsidiary of Debt under any Credit Facility,

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provided that (a) such Debt is Permitted Debt or is otherwise Incurred in accordance with the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt" and (b) such Guarantees are subordinated to the Notes to the same extent as the Debt being guaranteed;

(viii) Debt Incurred in respect of workers' compensation claims, self insurance obligations, indemnity, bid, performance, warranty, release, appeal, surety and similar bonds, letters of credit for operating purposes and completion guarantees provided or incurred (including Guarantees thereof) by the Company or a Restricted Subsidiary in the ordinary course of business;

(ix) Debt under Hedging Obligations entered into for *bona fide* hedging purposes to protect the Company and its Restricted Subsidiaries from fluctuations in interest rates, commodity prices and currency exchange rates and not for the purpose of speculation;

(x) Debt of the Company or any Restricted Subsidiary pursuant to Capital Lease Obligations and Purchase Money Debt under this clause (x), *provided* that the aggregate principal amount of such Debt outstanding at any time may not exceed \$15.0 million in the aggregate;

(xi) Debt arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, contribution, earnout, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Interests of a Restricted Subsidiary otherwise permitted under the Indenture;

(xii) the issuance by any of the Company's Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of Preferred Interests; *provided, however*, that:

(a) any subsequent issuance or transfer of Capital Interests that results in any such Preferred Interests being held by a Person other than the Company or a Restricted Subsidiary; and

(b) any sale or other transfer of any such Preferred Interests to a Person that is not either the Company or a Restricted Subsidiary;

shall be deemed, in each case, to constitute an issuance of such Preferred Interests by such Restricted Subsidiary that was not permitted by this clause (xii);

(xiii) Debt of the Company or any Restricted Subsidiary not otherwise permitted pursuant to this definition, in an aggregate principal amount not to exceed \$25.0 million at any time outstanding, which Debt may be Incurred under a Credit Facility;

(xiv) Purchase Money Notes Incurred by any Receivable Subsidiary that is a Restricted Subsidiary in a Qualified Receivables Transaction and Non-Recourse Receivable Subsidiary Indebtedness;

(xv) Refinancing Debt in respect of Debt permitted by clauses (ii), (iii) or (iv) above, or this clause (xv) or the provisions described in the first paragraph under the caption " Certain Covenants Limitation on Incurrence of Debt;"

(xvi) Debt of the Company or any of its Restricted Subsidiaries arising from customary cash management services or 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 and consistent with past practices; *provided, however*, that such Debt is extinguished within five business days of Incurrence;

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

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(xx) Debt of the Company or any of its Restricted Subsidiaries consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business; and

(xxi) Debt of Foreign Restricted Subsidiaries in an aggregate principal amount at any one time outstanding not to exceed the greater of (A) \$15.0 million and (B) 5.0% of the total consolidated assets of the Foreign Restricted Subsidiaries calculated on a consolidated basis in accordance with GAAP.

Notwithstanding anything herein to the contrary, Debt permitted under clause (i) of this definition of "Permitted Debt" shall not constitute "Refinancing Debt" under clause (xv) of this definition of "Permitted Debt."

"*Permitted Holders*" means Platinum Equity Capital Partners, L.P., a Delaware limited partnership, and Platinum Equity Capital Partners II, L.P., a Delaware limited partnership, or any of their Affiliates.

"*Permitted Investments*" means:

- (a) Investments in existence on the Issue Date;
- (b) Investments required pursuant to any agreement or obligation of the Company or a Restricted Subsidiary, in effect on the Issue Date, to make such Investments;
- (c) Investments in cash and Eligible Cash Equivalents;
- (d) Investments in property and other assets, owned or used by the Company or any Restricted Subsidiary in the normal course of business;
- (e) Investments by the Company or any of its Restricted Subsidiaries in the Company or any Restricted Subsidiary that is a Guarantor;
- (f) Investments by the Company or any Restricted Subsidiary in a Person, if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated or wound-up into, the Company or a Restricted Subsidiary;
- (g) Hedging Obligations entered into for *bona fide* hedging purposes to protect the Company and its Restricted Subsidiaries from fluctuations in interest rates, commodity prices and currency exchange rates and not for the purpose of speculation;
- (h) Investments received in settlement of obligations owed to the Company or any Restricted Subsidiary and as a result of bankruptcy or insolvency proceedings or upon the foreclosure or enforcement of any Lien in favor of the Company or any Restricted Subsidiary;
- (i) Investments by the Company or any Restricted Subsidiary (other than in an Affiliate) not otherwise permitted under this definition, in an aggregate amount not to exceed \$25.0 million at any one time outstanding (with the Fair Market Value of each such Investment being measured at the time made and without giving effect to subsequent changes in value);
- (j) loans and advances (including for travel and relocation) to employees in an amount not to exceed \$2.5 million in the aggregate at any one time outstanding;
- (k) Investments the payment for which consists solely of Qualified Capital Interests in the Company or the net cash proceeds from the issuance and sale of Qualified Capital Interests;
- (l) any Investment in any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with an Asset Sale consummated

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in compliance with the covenant described under the caption " Certain Covenants Limitation on Asset Sales" or any other disposition of property not constituting an Asset Sale;

(m) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and consistent with past practice;

(n) guarantees by the Company or any Restricted Subsidiary of Debt of the Company or a Restricted Subsidiary (other than a Receivable Subsidiary) of Debt otherwise permitted by the covenant described under the caption " Certain Covenants Limitation on Incurrence of Debt;"

(o) any Investment by the Company or any Restricted Subsidiary in a Receivable Subsidiary or any Investment by a Receivable Subsidiary in any other Person in connection with a Qualified Receivables Transaction, so long as any Investment in a Receivable Subsidiary is in the form of a Purchase Money Note or an Investment in Capital Interests; and

(p) any Investment by the Company or any Restricted Subsidiary in a Permitted Joint Venture; *provided* that the aggregate amount of all such Investments made pursuant to this clause (p) shall not exceed \$12.5 million at any one time outstanding (with the Fair Market Value of each such Investment being measured at the time made and without giving effect to subsequent changes in value).

"Permitted Joint Venture" means any agreement or other arrangement between the Company or a Restricted Subsidiary and any other Person engaged in a Permitted Business, consistent with the agreements and arrangements of the Company and its Restricted Subsidiaries in effect on the Issue Date, that permits one party to share risks or costs, comply with regulatory requirements or satisfy other business objectives customarily achieved through the conduct of such Permitted Business jointly with third parties.

"Permitted Liens" means:

(a) Liens existing on the Issue Date;

(b) Liens that secure Obligations Incurred pursuant to clause (i) of the definition of "Permitted Debt" (and any related Hedging Obligations permitted under the agreement related thereto);

(c) any Lien for taxes or assessments or other governmental charges or levies not then due and payable (or which, if due and payable, are being contested in good faith and for which adequate reserves are being maintained, to the extent required by GAAP, and such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien);

(d) any warehousemen's, materialmen's, landlord's or other similar Liens arising by law for sums not then due and payable (or which, if due and payable, are being contested in good faith and with respect to which adequate reserves are being maintained, to the extent required by GAAP, and such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien);

(e) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other similar restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Debt and which do not individually or in the

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aggregate materially adversely affect the value of the Company or materially impair the operation of the business of such Person;

(f) pledges or deposits (i) in connection with workers' compensation, unemployment insurance and other types of statutory obligations or the requirements of any official body; or (ii) to secure the performance of tenders, bids, surety or performance bonds, leases, purchase, construction, sales or servicing contracts and other similar obligations Incurred in the normal course of business consistent with industry practice; or (iii) to obtain or secure obligations with respect to letters of credit, Guarantees, bonds or other sureties or assurances given in connection with the activities described in clauses (i) and (ii) above, in each case not Incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property or services or imposed by ERISA or the Code in connection with a "plan" (as defined in ERISA) or (iv) arising in connection with any attachment unless such Liens shall not be satisfied or discharged or stayed pending appeal within 60 days after the entry thereof or the expiration of any such stay;

(g) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Company or a Restricted Subsidiary, or becomes a Restricted Subsidiary (and not created or Incurred in anticipation of such transaction), *provided* that such Liens are not extended to the property and assets of the Company and its Restricted Subsidiaries other than the property or assets acquired;

(h) Liens securing Debt of a Restricted Subsidiary that is a Guarantor owed to and held by the Company or a Restricted Subsidiary that is a Guarantor;

(i) other Liens (not securing Debt) incidental to the conduct of the business of the Company or any of its Restricted Subsidiaries, as the case may be, or the ownership of their assets which do not individually or in the aggregate materially adversely affect the value of such assets or materially impair the operation of the business of the Company or its Restricted Subsidiaries;

(j) Liens to secure any permitted extension, renewal, refinancing or refunding (or successive extensions, renewals, refinancings or refundings), in whole or in part, of any Debt secured by Liens referred to in the foregoing clauses (a) and (g); *provided* that such Liens do not extend to any other property or assets and the principal amount of the obligations secured by such Liens is not increased;

(k) Liens in favor of customs or revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods incurred in the ordinary course of business;

(l) Liens to secure Capital Lease Obligations and Purchase Money Debt permitted to be incurred pursuant to clause (x) of the definition of "Permitted Debt;" *provided* that such Liens do not extend to any Collateral;

(m) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligation in respect of banker's acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;

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(n) Liens on property or shares of Capital Interests of another Person at the time such other Person becomes a Restricted Subsidiary of such Person; *provided, however*, that (i) the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto) and (ii) such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Restricted Subsidiary;

(o) Liens (i) that are contractual rights of set-off (A) relating to the establishment of depository relations with banks not given in connection with the issuance of Debt, (B) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations and other cash management activities incurred in the ordinary course of business of the Company and or any of its Restricted Subsidiaries or (C) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business and (ii) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (Y) encumbering reasonable customary initial deposits and margin deposits and attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business, and (Z) in favor of banking institutions arising as a matter of law or pursuant to customary account agreements encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(p) Liens securing judgments for the payment of money not constituting an Event of Default under clause (7) under the caption "Events of Default" so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(q) Deposits made in the ordinary course of business to secure liability to insurance carriers;

(r) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business so long as such leases, subleases, licenses or sublicenses are subordinate in all respects to the Liens granted and evidenced by the Security Documents and which do not materially interfere with the ordinary conduct of the business of the Company or any Restricted Subsidiaries and do not secure any Debt;

(s) Liens arising from UCC financing statement filings regarding operating leases entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(t) Liens on the Collateral granted under the Security Documents in favor of the Collateral Agent to secure the Notes and the Note Guarantees; and

(u) Liens not otherwise permitted under the Indenture in an aggregate amount not to exceed \$10.0 million, *provided* that no portion of the Liens permitted pursuant to this clause (u) may be used to encumber Collateral.

"*Person*" means any individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"*Pledge Agreement*" means the pledge agreement being executed in connection with the issuance of the Notes pursuant to the Indenture between the Collateral Agent, the Company and the applicable Guarantors, among other things, granting a first-priority Lien on the Collateral, subject to Permitted Collateral Liens, in favor of the Collateral Agent for its benefit and for the benefit of the

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Trustee and the Holders, as amended, modified, restated, supplemented or replaced from time to time in accordance with its terms.

"*Preferred Interests*" as applied to the Capital Interests in any Person, means Capital Interests in such Person of any class or classes (however designated) that rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Common Interests in such Person.

"*Purchase Amount*" has the meaning set forth in the definition of "Offer to Purchase."

"*Purchase Date*" has the meaning set forth in the definition of "Offer to Purchase."

"*Purchase Money Debt*" means, with respect to any Person, Debt

(i) Incurred to finance the purchase or construction (including additions and improvements thereto) of any assets (other than Capital Interests) of such Person or any Restricted Subsidiary; and

(ii) that is secured by a Lien on such assets where the lender's sole security is to the assets so purchased or constructed; and

in each case that does not exceed 100% of the cost and to the extent the purchase or construction prices for such assets are or should be included in "addition to property, plant or equipment" in accordance with GAAP.

"*Purchase Money Note*" means a promissory note of a Receivable Subsidiary to the Company or any Restricted Subsidiary, which note must be repaid from cash available to the Receivable Subsidiary, other than amounts required to be established as reserves pursuant to agreements, amounts paid to investors in respect of interest, principal and other amounts owing to such investors and amounts paid in connection with the purchase of newly generated receivables. The repayment of a Purchase Money Note may be subordinated to the repayment of other liabilities of the Receivable Subsidiary on terms determined in good faith by the Company to be substantially consistent with market practice in connection with Qualified Receivables Transactions.

"*Purchase Price*" has the meaning set forth in the definition of "Offer to Purchase."

"*Qualified Capital Interests*" in any Person means Capital Interests in such Person other than Redeemable Capital Interests.

"*Qualified Equity Offering*" means (i) an underwritten public equity offering of Qualified Capital Interests pursuant to an effective registration statement under the Securities Act yielding gross proceeds to either of the Company, or any direct or indirect parent company of the Company, of at least \$25.0 million, (ii) a private equity offering of Qualified Capital Interests of the Company other than (x) any such public or private sale to an entity that is an Affiliate of the Company and (y) any public offerings registered on Form S-8 or (iii) the sale of shares of the Company's common stock pursuant to an exercise of the warrant issued to K Financing, LLC in June 2009, and subsequently transferred to K Equity, LLC, an affiliate of K Financing, LLC, to purchase shares of the Company's common stock.

"*Qualified Receivables Transaction*" means any transaction or series of transactions entered into by the Company or any of its Restricted Subsidiaries pursuant to which the Company or such Restricted Subsidiary transfers to (a) a Receivable Subsidiary (in the case of a transfer by the Company or any of its Restricted Subsidiaries) or (b) any other Person (in the case of a transfer by a Receivable Subsidiary), or grants a security interest in, any accounts receivable (whether now existing or arising in the future) of the Company or any of its Restricted Subsidiaries, and any assets related thereto, including, without limitation, all collateral securing such accounts receivable, all contracts and all Guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts

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receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with an accounts receivable financing transaction; *provided* such transaction is on market terms as determined in good faith by the Board of Directors of the Company at the time the Company or such Restricted Subsidiary enters into such transaction.

"*Rating Agencies*" means (1) each of Moody's and Standard & Poor's and (2) if Moody's or Standard & Poor's ceases to rate the Notes or fails to make a rating of the Notes publicly available, at the Company's sole option, a "nationally recognized statistical rating organization" as defined in Section 3 of the Exchange Act, selected by the Company (as certified by a resolution of the Board of Directors of the Company) as a replacement agency for Moody's or Standard & Poor's, or any of them, as the case may be.

"*Ratings Event*" means that the rating on the Notes is lowered by one or both of the Rating Agencies on any day during the period (which period will be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by any of the Rating Agencies) commencing 60 days prior to the first public notice of the occurrence of a Change of Control or the Company's intention to effect a Change of Control and ending 60 days following consummation of such Change of Control.

"*Receivable Subsidiary*" means a Subsidiary of the Company:

- (1) that is formed solely for the purpose of, and that engages in no activities other than activities in connection with, financing accounts receivable of the Company and/or its Restricted Subsidiaries;
- (2) that is designated by the Board of Directors of the Company as a Receivable Subsidiary pursuant to a resolution thereof set forth in an Officers' Certificate and delivered to the Trustee;
- (3) that is either (a) a Restricted Subsidiary or (b) an Unrestricted Subsidiary designated in accordance with the covenant described under the caption " Certain Covenants Limitation on Creation of Unrestricted Subsidiaries;"
- (4) no portion of the Debt or any other obligation (contingent or otherwise) of which (a) is at any time Guaranteed by the Company or any Restricted Subsidiary (excluding Guarantees of obligations (other than any Guarantee of Debt) pursuant to Standard Securitization Undertakings), (b) is at any time recourse to or obligates the Company or any Restricted Subsidiary in any way, other than pursuant to Standard Securitization Undertakings or (c) subjects any asset of the Company or any other Restricted Subsidiary of the Company, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings (such Debt, "*Non-Recourse Receivable Subsidiary Indebtedness*");
- (5) with which neither the Company nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than (a) contracts, agreements, arrangements and understandings entered into in the ordinary course of business on terms no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Company in connection with a Qualified Receivables Transaction as determined in good faith by the Board of Directors of the Company, (b) fees payable in the ordinary course of business in connection with servicing accounts receivable in connection with such a Qualified Receivables Transaction as determined in good faith by the Board of Directors of the Company and (c) any Purchase Money Note issued by such Receivable Subsidiary to the Company or a Restricted Subsidiary; and

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(6) with respect to which neither the Company nor any other Restricted Subsidiary has any obligation (a) to subscribe for additional shares of Capital Interests therein or make any additional capital contribution or similar payment or transfer thereto except in connection with a Qualified Receivables Transaction or (b) to maintain or preserve the solvency or any balance sheet term, financial condition, level of income or results of operations thereof.

"*Redeemable Capital Interests*" in any Person means any equity security of such Person that by its terms (or by terms of any security into which it is convertible or for which it is exchangeable), or otherwise (including the passage of time or the happening of an event), is required to be redeemed, is redeemable at the option of the holder thereof in whole or in part (including by operation of a sinking fund), or is convertible or exchangeable for Debt of such Person at the option of the holder thereof, in whole or in part, at any time prior to the Stated Maturity of the Notes; *provided* that only the portion of such equity security which is required to be redeemed, is so convertible or exchangeable or is so redeemable at the option of the holder thereof before such date will be deemed to be Redeemable Capital Interests. Notwithstanding the preceding sentence, any equity security that would constitute Redeemable Capital Interests solely because the holders of the equity security have the right to require the Company to repurchase such equity security upon the occurrence of a change of control or an asset sale will not constitute Redeemable Capital Interests if the terms of such equity security provide that the Company may not repurchase or redeem any such equity security pursuant to such provisions unless such repurchase or redemption complies with the covenant described under the caption " Certain Covenants Limitation on Restricted Payments." The amount of Redeemable Capital Interests deemed to be outstanding at any time for purposes of the Indenture will be the maximum amount that the Company and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Redeemable Capital Interests or portion thereof, exclusive of accrued dividends.

"*Redemption Price*," when used with respect to any Note to be redeemed, means the price at which it is to be redeemed pursuant to the Indenture.

"*Refinancing Debt*" means Debt that refunds, refinances, renews, replaces or extends any Debt permitted to be Incurred by the Company or any Restricted Subsidiary pursuant to the terms of the Indenture, whether involving the same or any other lender or creditor or group of lenders or creditors, but only to the extent that

(i) the Refinancing Debt is subordinated to the Notes to at least the same extent as the Debt being refunded, refinanced or extended, if such Debt was subordinated to the Notes,

(ii) the Refinancing Debt is scheduled to mature either (a) no earlier than the Debt being refunded, refinanced or extended or (b) at least 91 days after the maturity date of the Notes,

(iii) the Refinancing Debt has a weighted average life to maturity at the time such Refinancing Debt is Incurred that is equal to or greater than the weighted average life to maturity of the Debt being refunded, refinanced, renewed, replaced or extended,

(iv) such Refinancing Debt is in an aggregate principal amount that is less than or equal to the sum of (a) the aggregate principal or accreted amount (in the case of any Debt issued with original issue discount, as such) then outstanding under the Debt being refunded, refinanced, renewed, replaced or extended, (b) the amount of accrued and unpaid interest, if any, and premiums owed, if any, not in excess of preexisting prepayment provisions on such Debt being refunded, refinanced, renewed, replaced or extended and (c) the amount of reasonable and customary fees, expenses and costs related to the Incurrence of such Refinancing Debt, and

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(v) such Refinancing Debt is Incurred by the same Person (or its successor) that initially Incurred the Debt being refunded, refinanced, renewed, replaced or extended, except that the Company may Incur Refinancing Debt to refund, refinance, renew, replace or extend Debt of any Restricted Subsidiary of the Company.

"*Registration Rights Agreement*" means the Registration Rights Agreement, to be dated as of the Issue Date, among the Company, the Guarantors and the Initial Purchasers and any similar agreement entered into in connection with any Additional Notes.

"*Regulation S-X*" means Regulation S-X promulgated by the Commission.

"*Restricted Payment*" is defined to mean any of the following:

(a) any dividend or other distribution declared and paid on the Capital Interests in the Company or on the Capital Interests in any Restricted Subsidiary of the Company that are held by, or declared and paid to, any Person other than the Company or a Restricted Subsidiary, but excluding:

(i) dividends, distributions or payments made solely in Qualified Capital Interests in the Company; and

(ii) in the case of Restricted Subsidiaries, dividends or distributions payable to the Company or a Restricted Subsidiary of the Company or to other holders of Capital Interests of a Restricted Subsidiary on a pro rata basis;

(b) any payment made by the Company or any of its Restricted Subsidiaries to purchase, redeem, acquire or retire any Capital Interests in the Company or any of its Restricted Subsidiaries (including any issuance of Debt in exchange for such Capital Interests or the conversion or exchange of such Capital Interests into or for Debt) other than any such Capital Interests owned by the Company or any Restricted Subsidiary;

(c) any payment made by the Company or any of its Restricted Subsidiaries (other than a payment made solely in Qualified Capital Interests in the Company) to redeem, repurchase, defease (including an in substance or legal defeasance) or otherwise acquire or retire for value (including pursuant to mandatory repurchase covenants), prior to any scheduled maturity, scheduled sinking fund or mandatory redemption payment, Debt of the Company or any Guarantor that is subordinate (pursuant to its terms) in right of payment to the Notes or Note Guarantees (excluding any Debt owed to the Company or any Restricted Subsidiary); except payments of principal and interest in anticipation of satisfying a sinking fund obligation or final maturity, in each case, within one year of the due date thereof;

(d) any Investment by the Company or a Restricted Subsidiary in any Person, other than a Permitted Investment; and

(e) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary.

"*Restricted Subsidiary*" means any Subsidiary that has not been designated as an "Unrestricted Subsidiary" in accordance with the Indenture. Unless otherwise specified "Restricted Subsidiary" refers to a Restricted Subsidiary of the Company.

"*Sale and Leaseback Transaction*" means any direct or indirect arrangement pursuant to which property is sold or transferred by the Company or a Restricted Subsidiary and is thereafter leased back as a capital lease by the Company or a Restricted Subsidiary.

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Security Documents*" means the Pledge Agreement, any Intercreditor Agreement, the Foreign Law Security Documents and all of the security agreements, pledges, collateral assignments, mortgages,

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deeds of trust, trust deeds or other instruments evidencing or creating or purporting to create any Security Interests in favor of the Collateral Agent for its benefit and for the benefit of the Trustee and the Holders, in all or any portion of the Collateral, as amended, modified, restated, supplemented or replaced from time to time.

"*Security Interests*" means the Liens on the Collateral created by the Security Documents in favor of the Collateral Agent for its benefit and for the benefit of the Trustee and the Holders.

"*Senior Note Documents*" means the Indenture, Notes, the Note Guarantees and the Security Documents.

"*Significant Subsidiary*" has the meaning set forth in Rule 1-02 of Regulation S-X, but shall not include any Unrestricted Subsidiary.

"*Standard & Poor's*" means Standard & Poor's, a division of The McGraw Hill Companies, Inc., and any successor to its rating agency business.

"*Standard Securitization Undertakings*" means representations, warranties, covenants and indemnities entered into by the Company or any Restricted Subsidiary which are reasonably customary in an accounts receivable securitization transaction as determined in good faith by the Board of Directors of the Company, including Guarantees by the Company or any Restricted Subsidiary of any of the foregoing obligations of the Company or a Restricted Subsidiary.

"*Stated Maturity*," when used with respect to (i) any Note or any installment of interest thereon, means the date specified in such Note as the fixed date on which the principal amount of such Note or such installment of interest is due and payable and (ii) any other Debt or any installment of interest thereon, means the date specified in the instrument governing such Debt as the fixed date on which the principal of such Debt or such installment of interest is due and payable.

"*Subsidiary*" means, with respect to any Person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Interests therein is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person. Unless otherwise specified "Subsidiary" refers to a Subsidiary of the Company.

"*Subsidiary Guarantor*" means each Subsidiary of the Company that is a Guarantor.

"*Successor Entity*" means a corporation or other entity that succeeds to and continues the business of KEMET Corporation.

"*Total Assets*" means, at any time, the total consolidated assets of the Company and its Restricted Subsidiaries at such time, determined in accordance with GAAP.

"*Transaction Date*" has the meaning set forth in the definition of "Consolidated Fixed Charge Coverage Ratio."

"*Treasury Rate*" means, with respect to any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two business days prior to such redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such redemption date to May 1, 2014; *provided, however*, that if the period from such redemption date to May 1, 2014 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from such redemption date to May 1, 2014 is

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less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used.

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

"*Trust Monies*" means all cash and Cash Equivalents received by the Trustee:

- (1) upon the release of Collateral from the Lien of the Indenture or the Security Documents;
- (2) pursuant to the Security Documents;
- (3) as proceeds of any sale or other disposition of all or any part of the Collateral by or on behalf of the Trustee or any collection, recovery, receipt, appropriation or other realization of or from all or any part of the Collateral pursuant to the Indenture or any of the Security Documents or otherwise; or
- (4) for application as provided in the relevant provisions of the Indenture or any Security Document or which disposition is not otherwise specifically provided for in the Indenture or in any Security Document;

provided, however, that Trust Monies shall in no event include any property deposited with the Trustee for any redemption, legal defeasance or covenant defeasance of Notes, for the satisfaction and discharge of the Indenture or to pay the purchase price of Notes pursuant to an Offer to Purchase in accordance with the terms of the Indenture and shall not include any cash received or applicable by the Trustee in payment of its fees and expenses.

"*UCC*" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent's security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "*UCC*" shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

"*U.S. Bankruptcy Code*" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Voting Interests*" means, with respect to any Person, securities of any class or classes of Capital Interests in such Person entitling the holders thereof generally to vote on the election of members of the Board of Directors or comparable body of such Person.

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CERTAIN UNITED STATES INCOME TAX CONSIDERATIONS

The following is a summary of certain United States federal income tax considerations relating to the exchange of Old Notes for Exchange Notes in the Exchange Offer. It does not contain a complete analysis of all the potential tax considerations relating to the exchange. This summary is limited to holders of Old Notes who hold the Old Notes as "capital assets" (in general, assets held for investment). Special situations, such as the following, are not addressed:

tax consequences to holders who may be subject to special tax treatment, such as tax-exempt entities, dealers in securities or currencies, banks, other financial institutions, insurance companies, regulated investment companies, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings or corporations that accumulate earnings to avoid United States federal income tax;

tax consequences to persons holding notes as part of a hedging, integrated, constructive sale or conversion transaction or a straddle or other risk reduction transaction;

tax consequences to holders whose "functional currency" is not the United States dollar;

tax consequences to persons who hold notes through a partnership or similar pass-through entity;

United States federal gift tax, estate tax or alternative minimum tax consequences, if any; or

any state, local or non-United States tax consequences.

The discussion below is based upon the provisions of the United States Internal Revenue Code of 1986, as amended, existing and proposed Treasury regulations promulgated thereunder, and rulings, judicial decisions and administrative interpretations thereunder, as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in United States federal income tax consequences different from those discussed below.

Consequences of Tendering Old Notes

The exchange of your Old Notes for Exchange Notes in the Exchange Offer should not constitute an exchange for United States federal income tax purposes because the Exchange Notes should not be considered to differ materially in kind or extent from the Old Notes. Accordingly, the Exchange Offer should have no United States federal income tax consequences to you if you exchange your Old Notes for Exchange Notes. For example, there should be no change in your tax basis and your holding period should carry over to the Exchange Notes. In addition, the United States federal income tax consequences of holding and disposing of your Exchange Notes should be the same as those applicable to your Old Notes.

The preceding discussion of certain United States federal income tax considerations of the Exchange Offer is for general information only and is not tax advice. Accordingly, each investor should consult its own tax advisor as to particular tax consequences to it of exchanging Old Notes for Exchange Notes, including the applicability and effect of any state, local or foreign tax laws, and of any proposed changes in applicable laws.

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BOOK ENTRY, DELIVERY AND FORM

The Exchange Notes will be initially represented by one or more notes in registered global form without interest coupons (the "Global Notes"). The Global Notes will be deposited with the trustee, as custodian for the Depository Trust Company ("DTC"), in New York, New York, and registered in the name of DTC or its nominee, in each case for the credit to an account of a direct or indirect participant in DTC as described below. We expect that, pursuant to procedures established by DTC, (i) upon the issuance of the Global Notes, DTC or its custodian will credit, on its internal system, the principal amount at maturity of the individual beneficial interests represented by such Global Notes to the respective accounts of persons who have accounts with such depository ("participants") and (ii) ownership of beneficial interests in the Global Notes will be shown on, and the transfer of such ownership will be effected only through, records maintained by DTC or its nominee (with respect to interests of participants) and the records of participants (with respect to interests of persons other than participants). Such accounts initially will be designated by or on behalf of the initial purchasers and ownership of beneficial interests in the Global Notes will be limited to participants or persons who hold interests through participants. Holders may hold their interests in the Global Notes directly through DTC if they are participants in such system, or indirectly through organizations that are participants in such system.

So long as DTC or its nominee is the registered owner or holder of the notes, DTC or such nominee, as the case may be, will be considered the sole owner or holder of the notes represented by such Global Notes for all purposes under the indenture. No beneficial owner of an interest in the Global Notes will be able to transfer that interest except in accordance with DTC's procedures, in addition to those provided for under the indenture with respect to the notes.

Payments of the principal of, and premium (if any) and interest on, the Global Notes will be made to DTC or its nominee, as the case may be, as the registered owner thereof. None of the issuer, the trustee or any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Notes or for maintaining, supervising or reviewing any records relating to such beneficial ownership interest.

We expect that DTC or its nominee, upon receipt of any payment of principal of, and premium (if any) and interest on the Global Notes, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the Global Notes as shown on the records of DTC or its nominee. We also expect that payments by participants to owners of beneficial interests in the Global Notes held through such participants will be governed by standing instructions and customary practice, as is now the case with securities held for the accounts of customers registered in the names of nominees for such customers. Such payments will be the responsibility of such participants.

Transfers between participants in DTC will be effected in the ordinary way through DTC's same-day funds system in accordance with DTC rules and will be settled in same-day funds.

DTC has advised us that it will take any action permitted to be taken by a holder of notes (including the presentation of notes for exchange as described below) only at the direction of one or more participants to whose account the DTC interests in the Global Notes are credited and only in respect of such portion of the aggregate principal amount of notes as to which such participant or participants has or have given such direction.

DTC has advised us as follows: DTC is a limited-purpose trust company organized under New York banking law, a "banking organization" within the meaning of the New York banking law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds and provides asset servicing for issues of U.S. and

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non-U.S. equity, corporate and municipal debt issues that participants deposit with DTC. DTC also facilitates the post-trade settlement among participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between participants' accounts. This eliminates the need for physical movement of securities certificates. Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. Access to the DTC system is also available to indirect participants such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the Global Notes among participants of DTC, it is under no obligation to perform such procedures, and such procedures may be discontinued at any time. None of us, the trustee or any paying agent will have any responsibility for the performance by DTC or its participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

Certificated Securities

A Global Note is exchangeable for certificated notes in fully registered form without interest coupons ("Certificated Securities") only in the following limited circumstances:

DTC notifies us that it is unwilling or unable to continue as depository for the Global Notes and we fail to appoint a successor depository within 90 days of such notice, or

there shall have occurred and be continuing an event of default with respect to the notes under the indenture and DTC shall have requested the issuance of Certificated Securities.

The laws of some states require that certain persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer the notes will be limited to such extent.

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PLAN OF DISTRIBUTION

Each broker-dealer that receives Exchange Notes for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of Exchange Notes.

This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Notes received in exchange for Old Notes if the Old Notes were acquired as a result of market-making activities or other trading activities.

We have agreed to make this prospectus, as amended or supplemented, available to any broker-dealer to use in connection with any such resale for a period of at least 180 days after the expiration date. In addition, until (90 days after the date of this prospectus), all broker-dealers effecting transactions in the Exchange Notes may be required to deliver a prospectus.

We will not receive any proceeds from any sale of Exchange Notes by broker-dealers. Exchange Notes received by broker-dealers for their own account pursuant to the Exchange Offer may be sold from time to time in one or more transactions:

in the over-the-counter market;

in negotiated transactions; or

through the writing of options on the Exchange Notes or a combination of such methods of resale.

These resales may be made:

at market prices prevailing at the time of resale;

at prices related to such prevailing market prices; or

at negotiated prices.

Any such resale may be made directly to purchasers or to or through brokers or dealers. Brokers or dealers may receive compensation in the form of commissions or concessions from any such broker-dealer or the purchasers of any such Exchange Notes. An "underwriter" within the meaning of the Securities Act includes:

any broker-dealer that resells Exchange Notes that were received by it for its own account pursuant to the Exchange Offer;
or

any broker or dealer that participates in a distribution of such Exchange Notes.

Any profit on any resale of Exchange Notes and any commissions or concessions received by any persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that, by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

For a period of not less than 180 days after the expiration of the Exchange Offer we will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests those documents in the letter of transmittal. We have agreed to pay all expenses incident to performance of our obligations in connection with the Exchange Offer, other than commissions or concessions of any brokers or dealers. We will indemnify the holders of the Exchange Notes (including any broker-dealers) against certain

liabilities, including liabilities under the Securities Act, and will contribute to payments that they may be required to make in request thereof.

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LEGAL MATTERS

Certain legal matters related to the validity of the Exchange Notes will be passed upon for KEMET Corporation by Kirkland & Ellis LLP.

EXPERTS

The consolidated financial statements of KEMET Corporation and its subsidiaries' Current Report on Form 8-K filed on October 26, 2010 and the effectiveness of our internal control over financial reporting included in the Company's Annual Report on Form 10-K for the year ended March 31, 2010 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in its reports thereon, which are incorporated by reference herein. The consolidated financial statements of KEMET Corporation and its subsidiaries are incorporated by reference in reliance upon such reports given on the authority of Ernst & Young LLP as experts in accounting and auditing.

The consolidated financial statements of KEMET Corporation and its subsidiaries as of March 31, 2009 and for each of the years in the two year period ended March 31, 2009, have been incorporated by reference herein, in reliance upon the reports of KPMG LLP, an independent registered public accounting firm, and Deloitte & Touche S.p.A. ("Deloitte"), independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firms as experts in accounting and auditing. The report of KPMG LLP covering the March 31, 2009 consolidated financial statements contains (a) an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern and (b) an explanatory paragraph relating to the adoption of the provisions of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109*.

The consolidated financial statements of Arcotronics Italia S.p.A. and its subsidiaries as of March 31, 2009 and for the year ended March 31, 2009 and the period from October 12, 2007 (acquisition date) to March 31, 2008 have been audited by Deloitte, as stated in its report incorporated herein by reference. The report of Deloitte on the aforementioned consolidated financial statements as of March 31, 2009 and for the year ended March 31, 2009 and the period from October 12, 2007 (acquisition date) to March 31, 2008 contains an explanatory paragraph expressing substantial doubt about Arcotronics Italia S.p.A. and its subsidiaries' ability to continue as a going concern.

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\$230,000,000

KEMET Corporation

**Exchange Offer for all Outstanding
10¹/₂% Senior Notes due 2018**

PROSPECTUS

, 2010

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Directors and Officers

Delaware

KEMET Corporation, KEMET Electronics Corporation, KEMET Services Corporation and KRC Trade Corporation are incorporated under the laws of the State of Delaware.

Section 145 of the Delaware General Corporation Law, or the DGCL, provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal actions and proceedings, had no reasonable cause to believe that his conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

The Bylaws of KEMET Corporation, KEMET Electronics Corporation and KEMET Services Corporation provide for the indemnification of all current and former directors and officers to the fullest extent permitted by the DGCL.

Illinois

The Forest Electric Company is incorporated under the laws of the State of Illinois.

Section 8.75 of the Illinois Business Corporation Act of 1983, or the IBCA, provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal actions and proceedings, had no reasonable cause to believe that his conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the

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same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer, director or employee of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith. If such person acted in good faith and in a manner such person reasonably believed to be or not opposed to the best interests of the corporation.

The Registrant also maintains, at their expense, policies of insurance which insure their directors and officers, subject to exclusions and deductions as are usual in these kinds of insurance policies, against specified liabilities which may be incurred in those capacities.

Item 21. Exhibits and Financial Statement Schedules

(a)

Exhibits

EXHIBIT NO.	DESCRIPTION
3.1	Restated Certificate of Incorporation of the Company, as amended to date (incorporated by reference to Exhibit 4.1 to the Company's registration statement on Form S-3, filed with the SEC on October 21, 2010 (File No. 333-170073) and Exhibit 3.1 to the Company's Current Report on Form 8-K dated November 5, 2010).
3.2	Amended and Restated By-laws of KEMET Corporation, effective June 5, 2008 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K dated June 3, 2008).
**3.3	Restated Certificate of Incorporation of KEMET Electronics Corporation.
**3.4	By-laws of KEMET Electronics Corporation.
**3.5	Certificate of Incorporation of KEMET Services Corporation.
**3.6	By-laws of KEMET Services Corporation.
**3.7	Certificate of Incorporation of KRC Trade Corporation.
**3.8	By-laws of KRC Trade Corporation.
**3.9	Articles of Incorporation of The Forest Electric Company.
**3.10	By-laws of The Forest Electric Company.
4.1	Indenture, dated May 5, 2010, by and among the Company, certain subsidiary guarantors named therein and Wilmington Trust Company, as trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K dated May 5, 2010).
4.2	Registration Rights Agreement, dated May 5, 2010, by and among the Company, certain subsidiary guarantors named therein and the initial purchasers named therein (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K dated May 5, 2010).
**5.1	Opinion of Kirkland & Ellis LLP.
*12.1	Statement of Computation of Ratio of Earnings to Fixed Charges.
*23.1	Consent of Independent Registered Public Accounting Firm, Ernst & Young LLP

*23.2 Consent of Independent Registered Public Accounting Firm, KPMG LLP
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EXHIBIT NO.	DESCRIPTION
*23.3	Consent of Independent Registered Public Accounting Firm, Deloitte & Touche S.P.A.
**23.4	Consent of Kirkland & Ellis LLP (included as Exhibit 5.1)
**23.5	Consent of Paumanok Publications, Inc.
*24.1	Powers of Attorney (included on signature pages hereof).
**25.1	Statement of Eligibility of the Trustee on Form T-1 under the Trust Indenture Act.
**99.1	Form of Letter of Transmittal.
**99.2	Form of Notice of Guaranteed Delivery.
**99.3	Form of Letter to Brokers, Dealers and Other Nominees.
**99.4	Form of Letter to Beneficial Owners Regarding Offer to Exchange.

*
Filed herewith.

**
Previously filed.

Item 22. Undertakings

The undersigned registrants hereby undertake:

- (a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
 - (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
- (b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c)

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To remove from the registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(d)

That, for purposes of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses

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filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

- (e) That, for the purpose of determining liability of the registrants under the Securities Act to any purchaser in the initial distribution of the securities: The undersigned registrants undertake that in a primary offering of securities of the undersigned registrants pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrants will each be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
- (i) any preliminary prospectus or prospectus of the undersigned registrants relating to the offering required to be filed pursuant to Rule 424;
 - (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrants;
 - (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrants; and
 - (iv) any other communication that is an offer in the offering made by the undersigned registrants to the purchaser.
- (f) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrants pursuant to the provisions described in Item 20, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
- (g) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), or 11 or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the date of the registration statement through the date of responding to the request.
- (h) To supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.
- (i) That, for the purposes of determining any liability under the Securities, Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange

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Act that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 1 to this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Simpsonville, State of South Carolina, on November 17, 2010.

KEMET Corporation
(Registrant)

By: _____ /s/ WILLIAM M. LOWE, JR.

Name: William M. Lowe, Jr.
Title: Executive Vice President &
Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
* _____ Per-Olof Loof	Chief Executive Officer and Director (Principal Executive Officer)	November 17, 2010
/s/ WILLIAM M. LOWE, JR. _____ William M. Lowe, Jr.	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	November 17, 2010
* _____ Frank G. Brandenburg	Director	November 17, 2010
* _____ Dr. Wilfried Backes	Director	November 17, 2010
* _____ Gurminder S. Bedi	Director	November 17, 2010
* _____ Joseph V. Borruso	Director	November 17, 2010
* _____ E. Erwin Maddrey, II	Director	November 17, 2010

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Name	Title	Date
*		
Robert G. Paul	Director	November 17, 2010
*		
Joseph D. Swann	Director	November 17, 2010
*By: /s/ WILLIAM M. LOWE, JR.		
William M. Lowe, Jr., as <i>Attorney-in-Fact</i>		
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*By: /s/ WILLIAM M. LOWE, JR.

William M. Lowe, Jr., as
Attorney-in-Fact

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 1 to this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Simpsonville, State of South Carolina, on November 17, 2010.

The Forest Electric Company
(Registrant)

/s/ CHARLES C. MEEKS, JR

Name: Charles C. Meeks, Jr.
Title: *President and Director*

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
<u>/s/ CHARLES C. MEEKS, JR.</u> Charles C. Meeks, Jr.	President and Director (Principal Executive Officer)	November 17, 2010
<u>/s/ MICHAEL W. BOONE</u> Michael W. Boone	Secretary and Director (Principal Financial and Accounting Officer)	November 17, 2010