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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 20549

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**FORM 8-K**

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

Date of Report (Date of earliest event reported) **November 15, 2010**

**BALL CORPORATION**  
(Exact name of Registrant as Specified in Charter)

**Indiana**  
(State or Other Jurisdiction  
of Incorporation)

**001-07349**  
(Commission  
File Number)

**35-0160610**  
(IRS Employer  
Identification No.)

**10 Longs Peak Drive, P.O. Box 5000, Broomfield, Colorado**  
(Address of Principal Executive Offices)

**80021-2510**  
(Zip Code)

Registrant's telephone number, including area code **(303) 469-3131**

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry Into a Material Definitive Agreement.**

On November 18, 2010, Ball Corporation (the "Company") completed the sale of \$500,000,000 in aggregate principal amount of 5.75% senior notes due 2021 (the "2021 Notes"). The Notes were sold under the Company's shelf registration statement (Registration No. 333-157537) (the "Registration Statement").

The Company entered into an underwriting agreement, dated November 15, 2010 (the "Underwriting Agreement"), among the Company, the subsidiary guarantors (the "Guarantors") and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several underwriters named therein (the "Underwriters"), in connection with the issuance and sale by the Company of the 2021 Notes. The Underwriting Agreement includes customary representations, warranties and covenants. It also provides for customary indemnification by each of the Company, the Guarantors and the Underwriters against certain liabilities and customary contribution provisions in respect of those liabilities.

The public offering price of the 2021 Notes was 100.000% of the principal amount. The Company intends to use the net proceeds from the offering to repay the borrowings under its U.S. dollar denominated secured term loan facility (the "Term D loan facility") and for general corporate purposes, which may include potential investments in strategic alliances and acquisitions, the refinancing or repayment of debt, working capital, share repurchases or capital expenditures.

The 2021 Notes were issued under an Indenture, dated March 27, 2006 (the "Base Indenture"), between the Company and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York Mellon (formerly known as The Bank of New York)), as supplemented by a Fifth Supplemental Indenture, dated November 18, 2010, among the Company, the Guarantors and the Trustee (the "Fifth Supplemental Indenture" and, together with the Base Indenture, the "Indenture"). The Indenture and the form of note, which is attached as an exhibit to the Indenture, provide, among other things, that the 2021 Notes will be senior unsecured obligations of the Company.

Interest is payable on the 2021 Notes on May 15 and November 15 of each year beginning on May 15, 2011 until their maturity date of May 15, 2021. The Company may redeem some or all of the 2021 Notes at any time prior to November 15, 2015 at a price equal to 100% of the principal amount of the 2021 Notes redeemed plus an applicable make-whole premium. On or after November 15, 2015, the Company may redeem some or all of the 2021 Notes at redemption prices set forth in the Fifth Supplemental Indenture. In addition, at any time prior to November 15, 2013, the Company may redeem up to 35% of the aggregate principal amount of the 2021 Notes at a redemption price of 105.75% of the principal amount of the 2021 Notes redeemed with the net cash proceeds of certain equity offerings.

The Company's payment obligations under the 2021 Notes are fully and unconditionally guaranteed on an unsecured senior basis by certain of its current domestic subsidiaries (and will be guaranteed by certain of its future domestic subsidiaries), other than certain excluded subsidiaries and unrestricted subsidiaries. The 2021 Notes are not guaranteed by any of the Company's foreign subsidiaries.

The terms of the Indenture, among other things, limit in certain respects the ability of the Company and its restricted subsidiaries to incur additional debt and issue preferred stock; pay dividends or make other restricted payments; make certain investments; create liens; allow restrictions on the ability of certain of its subsidiaries to pay dividends or make other payments to it; sell assets; engage in certain sale and leaseback transactions; merge or consolidate with other entities; and enter into transactions with affiliates. If the 2021 Notes are, in the future, rated investment grade by any two of Moody's Investors Services, Inc., Standard & Poor's Ratings Services and Fitch Inc., certain covenants, as set forth in the Indenture, will, thereafter, no longer apply to the 2021 Notes, irrespective of whether the 2021 Notes continue to be rated investment grade.

Subject to certain limitations, in the event of a change of control of the Company, the Company will be required to make an offer to purchase the 2021 Notes at a price equal to 101% of the principal amount of the 2021 Notes, plus accrued and unpaid interest to the date of repurchase.

The Indenture provides for customary events of default which include (subject in certain cases to customary grace and cure periods), among others, nonpayment of principal or interest; breach of other agreements in the Indenture; defaults in failure to pay certain other indebtedness; the failure to pay certain final judgments; the failure

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of certain guarantees to be enforceable; and certain events of bankruptcy or insolvency. Generally, if an event of default occurs, the Trustee or the holders of at least 25% in aggregate principal amount of the then outstanding 2021 Notes may declare all the 2021 Notes to be due and payable immediately.

Deutsche Bank AG, New York Branch, an affiliate of Deutsche Bank Securities Inc., is the administrative agent and collateral agent under the Company's existing credit facilities. Bank of America, N.A., an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, is a co-syndication agent under the existing credit facilities. Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities LLC act as joint lead arrangers, joint mandated arrangers and joint book managers for the existing credit facilities and jointly manage the syndication of the existing credit facilities. Affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman, Sachs & Co., Deutsche Bank Securities Inc., J.P. Morgan Securities LLC and Barclays Capital Inc. are lenders under the existing credit facilities, which include the Term D loan facility and the Company's revolving credit facility. Such affiliates will receive a portion of the proceeds from the offering assuming repayment of the Term D loan facility. In the event that the Company uses a portion of the proceeds from the offering to repay borrowings under the revolving credit facility, these affiliates will receive a portion of the proceeds from the offering. An affiliate of J.P. Morgan Securities LLC is lead arranger of the Company's accounts receivable securitization facility. The Underwriters and their affiliates may in the future perform various investment banking, commercial lending, financial advisory and other services for the Company.

Copies of the Underwriting Agreement, the Base Indenture and the Fifth Supplemental Indenture are attached hereto as Exhibits 1.1, 4.1 and 4.2 to this Current Report on Form 8-K, respectively, and are incorporated by reference herein. The above description of the material terms of the Underwriting Agreement, the Indenture and the 2021 Notes does not purport to be complete and is qualified in its entirety by reference to such Exhibits.

#### **Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth in Item 1.01 above with respect to the Notes, the Indenture and the Underwriting Agreement is hereby incorporated by reference into this Item 2.03, insofar as it relates to the creation of a direct financial obligation.

#### **Item 9.01. Financial Statements and Exhibits.**

The agreements included as Exhibits to this Current Report on Form 8-K contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties were made solely for the benefit of the other parties to the applicable agreement and (i) were not intended to be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate; (ii) may have been qualified in such agreement by disclosures that were made to the other party in connection with the negotiation of the applicable agreement; (iii) may apply contract standards of "materiality" that are different from "materiality" under the applicable securities laws; and (iv) were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement.

The Company acknowledges that, notwithstanding the inclusion of the foregoing cautionary statements, it is responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this Current Report on Form 8-K not misleading.

(d) Exhibits.

Exhibit Number	Description
1.1	Underwriting Agreement, dated November 15, 2010.
4.1	Indenture, dated March 27, 2006, between Ball Corporation and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York Mellon (formerly known as The Bank of New York)) (filed by incorporation by reference to the Current Report on Form 8-K dated March 27, 2006) filed March 30, 2006.

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4.2	Fifth Supplemental Indenture, dated November 18, 2010, among Ball Corporation, the guarantors named therein and The Bank of New York Mellon Trust Company, N.A. (successor to The Bank of New York Mellon (formerly known as The Bank of New York)).
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#### **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: November 19, 2010

BALL CORPORATION

By: /s/ Charles E. Baker  
Name: Charles E. Baker  
Title: Vice President, General Counsel and Assistant Corporate Secretary

**EXHIBIT INDEX**

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## Ball Corporation

\$500,000,000

5¾% Senior Notes due 2021

Underwriting Agreement

November 15, 2010

Merrill Lynch, Pierce, Fenner & Smith  
 Incorporated  
 As representative of the several Underwriters  
 named in Schedule I hereto,  
 One Bryant Park  
 New York, New York 10036

Ladies and Gentlemen:

Ball Corporation, an Indiana Corporation (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell to the several underwriters named in Schedule I hereto (the "Underwriters") for whom you are acting as representative (the "Representative"), an aggregate of \$500,000,000 principal amount of its 5¾% Senior Notes due 2021 (the "Notes") pursuant to this agreement (the "Agreement"). The Notes will be guaranteed (collectively, the "Guarantees") by each of the subsidiary guarantors named in Schedule II hereto (the "Guarantors"). The Notes and the Guarantees are collectively referred to herein as the "Securities." The Securities are to be issued pursuant to the provisions of a base indenture dated March 27, 2006 (the "Base Indenture"), among the Company, the Guarantors and the Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), as amended and supplemented by the fifth supplemental indenture with respect to the Notes among Ball, the Guarantors and the Trustee, to be dated November 18, 2010. The Base Indenture, as supplemented by the fifth supplemental indenture is referred to herein as the "Indenture."

1. The Company and the Guarantors, jointly and severally, represent and warrant to, and agree with, each of the Underwriters that:

(a) An "automatic shelf registration statement" as defined under Rule 405 under the Securities Act of 1933, as amended (the "Act") on Form S-3 (File No. 333-157537) in respect of the Securities has been filed

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with the Securities and Exchange Commission (the "Commission") not earlier than three years prior to the date hereof; such registration statement, and any post-effective amendment thereto, became effective on filing; and no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose or pursuant to Section 8A of the Act has been initiated or threatened by the Commission, and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Act has been received by the Company (the base prospectus filed as part of such registration statement, in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "Basic Prospectus"; any preliminary prospectus (including any preliminary prospectus supplement) relating to the Securities filed with the Commission pursuant to Rule 424(b) under the Act is hereinafter called a "Preliminary Prospectus"; the various parts of such registration statement, including all exhibits thereto but excluding the Form T-1 and including any prospectus supplement relating to the Securities that is filed with the Commission and deemed by virtue of Rule 430B to be part of such registration statement, each as amended at the time such part of the registration statement became effective, are hereinafter collectively called the "Registration Statement"; the Basic Prospectus, as amended and supplemented immediately prior to the Applicable Time (as defined in Section 1(c) hereof), is hereinafter called the "Pricing Prospectus"; the form of the final prospectus relating to the Securities filed with the Commission pursuant to Rule 424(b) under the Act in accordance with Section 5(a) hereof is hereinafter called the "Prospectus"; any reference herein to the Basic Prospectus, the Pricing Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Act, as of the date of such prospectus; any reference to any amendment or supplement to the Basic Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement relating to the Securities filed with the Commission pursuant to Rule 424(b) under the Act and any documents filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and incorporated therein, in each case after the date of the Basic Prospectus, such Preliminary Prospectus, or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any "issuer free writing prospectus" as

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defined in Rule 433 under the Act relating to the Securities is hereinafter called an "Issuer Free Writing Prospectus");

(b) No order preventing or suspending the use of any Preliminary Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and each Preliminary Prospectus, at the time of filing thereof, conformed in all material respects to the requirements of the Act and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") and the rules and regulations of the Commission thereunder, and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through Merrill Lynch, Pierce, Fenner & Smith Incorporated expressly for use therein;

(c) For the purposes of this Agreement, the "Applicable Time" is 3:15 p.m. (Eastern time) on the date of this Agreement; the Pricing Prospectus as supplemented by the final term sheet contemplated by Section 5(a) hereof, which will be filed pursuant to Rule 433(d) under the Act, in the form attached hereto as

Schedule III, taken together (collectively, the “Pricing Disclosure Package”) as of the Applicable Time, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each Issuer Free Writing Prospectus listed on Schedule IV hereto does not conflict with the information contained in the Registration Statement, the Pricing Prospectus or the Prospectus and each such Issuer Free Writing Prospectus, as supplemented by and taken together with the Pricing Disclosure Package as of the Applicable Time, did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to statements or omissions made in an Issuer Free Writing Prospectus in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through Merrill Lynch, Pierce, Fenner & Smith Incorporated expressly for use therein;

(d) The Company has not distributed and will not distribute, prior to the Time of Delivery, any offering material in connection with the offering and sale of the Securities other than a preliminary prospectus, the Prospectus, and any Issuer Free Writing Prospectus reviewed and

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consented to by Merrill Lynch, Pierce, Fenner & Smith Incorporated and included in Schedule III or IV hereto;

(e) The documents incorporated by reference in the Preliminary Prospectus and the Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; any further documents so filed and incorporated by reference in the Prospectus or any further amendment or supplement thereto, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through Merrill Lynch, Pierce, Fenner & Smith Incorporated expressly for use therein; and no such documents were filed with the Commission since the Commission’s close of business on the business day immediately prior to the date of this Agreement and prior to the execution of this Agreement, except as set forth on Schedule IV hereto;

(f) The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will conform, in all material respects to the requirements of the Act and the Trust Indenture Act of 1939 (the “Trust Indenture Act”) and the rules and regulations of the Commission thereunder and do not and will not, as of the applicable effective date as to each part of the Registration Statement and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through Merrill Lynch, Pierce, Fenner & Smith Incorporated expressly for use therein;

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(g) Neither the Company nor any of its subsidiaries has sustained since the date of the latest audited financial statements included or incorporated by reference in the Pricing Disclosure Package any loss or interference with their business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Disclosure Package, which loss or interference has resulted in a Material Adverse Change (as defined below); and, since the respective dates as of which information is given in the Registration Statement and the Pricing Disclosure Package (exclusive of any amendments or supplements thereto after the Applicable Time), there has not been any material adverse change in the capital stock or long term debt of the Company or any of its subsidiaries, taken as a whole, or any material adverse change, or development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders’ equity or results of operations of the Company and its subsidiaries, taken as a whole (a “Material Adverse Change”), otherwise than as set forth or contemplated in the Pricing Disclosure Package;

(h) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of Indiana, with requisite corporate power and authority to own, lease and operate its properties and conduct its business as described in the Pricing Disclosure Package, and is duly qualified to conduct its business and is in good standing as a foreign corporation in each jurisdiction or place where the nature of its properties or the conduct of its business requires such qualification, except where the failure to qualify or to be in good standing would not reasonably be expected to result in a Material Adverse Change;

(i) Each of the Company’s subsidiaries is a corporation or limited liability company duly incorporated or formed, as the case may be, and validly existing and in good standing (except in those jurisdictions where the concept of good standing is not recognized) under the laws of its jurisdiction of organization with full power and authority to own, lease and operate its properties and to conduct its business as presently conducted, and is duly qualified to conduct its business and is in good standing (except in those jurisdictions where the concept of good standing is not recognized) as a foreign corporation or limited liability company in each jurisdiction where the nature of its properties or the conduct of its business requires such qualification, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Change;

(j) The Company has an authorized capitalization as set forth in the Pricing Disclosure Package and all of the shares of capital stock,

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membership or other equity interest of the Company and the Restricted Subsidiaries have been duly and validly authorized and issued and are fully paid and non-assessable; and all of the issued shares of capital stock, partnership, membership or other equity interests of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and (except for directors’ qualifying shares) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such as are described in the Pricing Disclosure Package, granted pursuant to the existing credit facilities (as defined in the Pricing Prospectus and the Prospectus) or such as would not reasonably be expected to result in a Material Adverse Change;

(k) The Company and each of the Guarantors have all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and this Agreement has been duly authorized, executed and delivered by the Company and the Guarantors;

(l) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Notes; the Notes have been duly authorized by the Company and, when issued and delivered pursuant to this Agreement, assuming due authentication, execution and delivery of the Notes by the Trustee, upon delivery to the Underwriters against payment therefore in accordance with the terms hereof, will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company entitled to the benefits provided by the Indenture, under which they are to be issued, which is substantially in the form filed as an exhibit to the Registration Statement; the Indenture has been duly authorized by the Company and each Guarantor and duly qualified under the Trust Indenture Act and, when executed and delivered by the Company, each Guarantor and the Trustee (assuming due authorization, execution and delivery by the Trustee), will constitute a valid and legally binding instrument, enforceable against the Company and each Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and the Securities and the Indenture will conform to the descriptions thereof in the Pricing Disclosure Package and the Prospectus in all material respects;

(m) Each Guarantor has all requisite power (corporate or otherwise) and authority to execute, deliver and perform its obligations under the Guarantees; the Guarantees to be endorsed on the Notes have been duly authorized by each Guarantor and, if and when executed and delivered by each Guarantor in accordance with the terms of the Indenture

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and, assuming due authentication of the Notes and Guarantees by the Trustee, upon delivery of the notes to the Underwriters against payment therefor in accordance with the terms hereof, have been validly issued and delivered, and will constitute valid and binding obligations of each of the Guarantors, entitled to the benefits of the Indenture, enforceable against each of the Guarantors in accordance with their terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and the Guarantees will conform to the descriptions thereof in the Pricing Disclosure Package and the Prospectus in all material respects;

(n) Other than as disclosed in the Pricing Disclosure Package and the Prospectus, the Company does not own capital stock or other equity interests of any corporation or entity which would be required by the Indenture to be a Guarantor thereunder. All of the Company's domestic subsidiaries that guarantee any other Indebtedness (as defined in the Indenture) of the Company as of the date of the fifth supplemental indenture other than (i) any Excluded Subsidiaries (as defined in the Pricing Disclosure Package and the Prospectus) (the "Excluded Subsidiaries") and (ii) Ball Asia Pacific, Ball Capital Corp. II and any other Unrestricted Subsidiaries (as defined in the Pricing Disclosure Package and the Prospectus) (the "Unrestricted Subsidiaries") are Guarantors under the Indenture; and as of the date hereof, the Excluded Subsidiaries have aggregate net sales of not more than \$10 million in any twelve-month period and aggregate assets, including capitalization, of not more than \$10 million;

(o) The execution, delivery and performance of this Agreement, the Indenture and the Notes by the Company, the issuance of the Guarantees by the Guarantors, the consummation of the transactions contemplated hereby and the application of the proceeds from the sale of the Securities as described under "Use of Proceeds" in each of the Pricing Disclosure Package and the Prospectus will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the Certificate of Incorporation or Bylaws or similar organizational documents of the Company or the Guarantors, (iii) impose any lien, charge or encumbrance upon any property or assets of the Company and its subsidiaries, except for such as are described in the Pricing Disclosure Package, granted pursuant to the existing credit facilities, or (iv) violate

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any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties except, in the case of clauses (i), (iii) and (iv), for such matters as would not result in a Material Adverse Change;

(p) No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets is required for the issue and sale of the Securities or the consummation by the Company or any of its subsidiaries of the transactions contemplated by this Agreement or the Indenture except such as have been obtained under the Act and the Trust Indenture Act and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Underwriters except to the extent that such consent, approval, authorization, order registration or qualification would not result in a Material Adverse Change;

(q) Except as described in the Pricing Disclosure Package and to the Company's knowledge, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act;

(r) Neither the Company nor any of the Guarantors have sold or issued any securities that would be integrated with the offering of the Securities contemplated by this Agreement pursuant to the Act, the rules and regulations or the interpretations thereof by the Commission;

(s) The statements set forth in the Pricing Prospectus and the Prospectus under the captions "Description of Notes" and "Description of Other Indebtedness," insofar as they purport to constitute a summary of the terms of the Securities and under the Caption "Underwriting", insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair in all material respects;

(t) Except as described in the Pricing Disclosure Package, there are no legal or governmental proceedings pending or, to the knowledge of the Company or any of the Guarantors, expressly contemplated by, or threatened, against the Company or any of the Guarantors or to which any of its properties are subject, that are not

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disclosed in the Pricing Disclosure Package or incorporated by reference therein, and would result in a Material Adverse Change or materially and adversely affect the issuance of the Securities or the consummation of the other transactions contemplated hereby;

(u) Except as disclosed in the Pricing Disclosure Package, neither the Company nor any of the Guarantors is involved in any strike, job action or labor dispute with any group of employees that is reasonably likely to result in a Material Adverse Change and, to the knowledge of the Company and each of the Guarantors, no such action or dispute is threatened;

(v) The Company and the Guarantors are not, and as of the Time of Delivery and, after giving effect to the offering and sale of the Securities and the application of the proceeds therefrom as described under the “Use of Proceeds” in the Pricing Disclosure Package, will not be an “investment company”, as such term is defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”);

(w) (A) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Act) made any offer relating to the Securities in reliance on the exemption of Rule 163 under the Act, the Company was a “well-known seasoned issuer” as defined in Rule 405 under the Act; and (B) at the earliest time after the filing of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Act) of the Securities, the Company was not an “ineligible issuer” as defined in Rule 405 under the Act;

(x) PricewaterhouseCoopers, LLP, who have certified certain financial statements of the Company and its subsidiaries, and have audited the Company’s internal control over financial reporting are, to the knowledge of the Company, independent public accountants as required by the Act and the rules and regulations of the Commission thereunder and the rules and regulations of the Public Accounting Oversight Board;

(y) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that complies in all material respects with the requirements of the Exchange Act and has been designed by the Company’s principal executive officer and principal financial officer, or under their supervision,

to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles (“GAAP”). Except as disclosed in the Pricing Disclosure Package, the Company’s internal control over financial reporting is effective in all material respects and the Company is not aware of any material weaknesses in its internal control over financial reporting;

(z) There is and has been no failure on the part of the Company or, to the Company’s knowledge, any of the Company’s directors or officers, in their capacities as such, to comply in all material respects with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith;

(aa) The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company’s principal executive officer and principal financial officer by others within those entities; and such disclosure controls and procedures are effective in all material respects;

(bb) Except as disclosed in or contemplated by the Pricing Disclosure Package, subsequent to the date as of which such information was given, (i) neither the Company nor any of its subsidiaries has incurred any liability or obligation, direct or contingent, or entered into any transaction, in each case not in the ordinary course of business, that has resulted in a Material Adverse Change and (ii) since the date of the latest audited combined financial statements of the Company included in the Pricing Disclosure Package, there has been no (A) dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock (other than the payment of regular quarterly cash dividends), (B) issuance of securities (other than pursuant to the Company’s or such subsidiary’s employee benefit plans and agreements and the issuance of the Securities offered hereby) or (C) material increase in short-term or long-term debt of the Company or such subsidiary;

(cc) The consolidated and combined historical financial statements, together with the related notes thereto, set forth or incorporated by reference in the Pricing Disclosure Package comply as to form in all material respects with the requirements of Regulation S-X under the Act applicable to registration statements on Form S-3 under the Act. Such historical financial statements fairly present in all material respects the financial position of the Company at the respective dates indicated and

the results of operations and cash flows for the respective periods indicated, in each case in accordance with GAAP, consistently applied throughout such periods. The other financial information and data included or incorporated by reference in the Pricing Disclosure Package are, in all material respects, accurately presented and prepared on a basis consistent with such financial statements and the books and records of the Company;

(dd) The market-related and industry data included or incorporated by reference in the Pricing Disclosure Package are based on estimates by the Company derived from sources which the Company believes to be reliable and accurate in all material respects;

(ee) Except as described in the Pricing Disclosure Package, no material relationship, direct or indirect, exists between or among the Company or any of the Guarantors on the one hand, and the directors, officers, shareholders, members, partners, customers or suppliers of the Company or any of the Guarantors on the other hand, that would be required to be described in the Pricing Disclosure Package pursuant to Item 404 of Regulation S-K of the Act, which is not so described;

(ff) The Company and each of its significant subsidiaries has filed all Federal, state and local income and franchise tax returns required to be filed through the date hereof (other than those the nonfiling of which would not result in a Material Adverse Change) and has paid all taxes due thereon, other than those being contested in good faith and for which reserves have been provided in accordance with GAAP currently payable without penalty or interest, or the nonpayment of which would not result in a Material Adverse Change. No tax deficiency has been determined adversely to the Company which would, nor does the Company have any knowledge of any tax deficiency which, if determined adversely to the Company, would, in either such case, result in a Material Adverse Change;

(gg) The Company and each of its subsidiaries together maintain or are entitled to the benefits of insurance covering their properties, operations, personnel and businesses. Such insurance insures against such losses and risks as are reasonably adequate in accordance with customary industry practice to protect the Company and its subsidiaries and their businesses taken as a whole;

(hh) Neither the Company nor any of its subsidiaries (i) is in violation of its certificate of incorporation, bylaws or other organizational documents, (ii) is in default in any material respect in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, or other agreement or instrument to which any of them is a party or by which any of them is

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bound or to which any of their respective properties or assets is subject to the Company's consolidated financial condition or prospects or (iii) is in violation of any law, statute or ordinance or any rule, regulation, injunction or decree of any court or governmental agency to which their property or assets may be subject or has failed to obtain any material license, permit, certificate, franchise, or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of (ii) or (iii), as would not, individually or in the aggregate, result in a Material Adverse Change;

(ii) The Company and each of its subsidiaries will, on or prior to the Time of Delivery, have such permits, licenses, franchises, certificates, consents, orders and other approvals or authorizations of any governmental or regulatory authority ("Permits") as are necessary under applicable law to own its properties and to conduct its businesses in the manner described in the Pricing Disclosure Package, except to the extent that the failure to have such Permits would not reasonably be expected to result in a Material Adverse Change. The Company and each of its subsidiaries is in compliance in all material respects with all its obligations with respect to the Permits, and, to the knowledge of the Company, no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any such Permit, subject in each case to such qualification as may be set forth in the Pricing Disclosure Package and except to the extent that any such revocation, termination or impairment would not result in a Material Adverse Change;

(jj) Except as would not reasonably be expected to result in a Material Adverse Change, the Company and each of its subsidiaries own or possess adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, know-how, software, systems and technology (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses and have no reason to believe that the conduct of their respective businesses will conflict with, and have not received any notice of any claim of conflict with, any such rights of others;

(kk) Except as described in the Pricing Disclosure Package, there has been no storage, disposal, generation, transportation, handling or treatment of toxic wastes, medical wastes, hazardous wastes or hazardous substances by the Company at, upon or from any of the property now or previously owned or leased by the Company in violation of any applicable law, ordinance, rule, regulation or order, or which would

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require remedial action under any applicable law, ordinance, rule, regulation or order, except for any violation or remedial action which would not be reasonably likely to result in, singularly or in the aggregate, a Material Adverse Change; except as set forth in, or specifically contemplated by, the Pricing Disclosure Package, there has been no material spill, discharge, leak, emission, injection, escape, dumping or release of any kind onto such property or into the environment surrounding such property of any toxic wastes, solid wastes, hazardous wastes or hazardous substances due to or caused by the Company or with respect to which the Company has knowledge, except for any such spill, discharge, leak, emission, injection, escape, dumping or release which would not be reasonably likely to result in, singularly or in the aggregate, a Material Adverse Change; and the terms "hazardous wastes," "medical wastes," "toxic wastes," and "hazardous substances" shall have the meanings specified in any applicable local, state, federal and foreign laws or regulations with respect to environmental protection;

(ll) Neither the Company nor any of its subsidiaries, nor, to the knowledge of the Company or the Guarantors, any director, officer, employee or agent of the Company or any of its subsidiaries, has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, except, in the case of clauses (i), (ii), (iii) and (iv), for such matters as would not reasonably be expected to result in a Material Adverse Change.

(mm) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened, except, in each case, as would not reasonably be expected to result in a Material Adverse Change;

(nn) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to

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any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC; and

(oo) Prior to the date hereof, neither the Company nor any of its subsidiaries has taken any action which is designed to or which has constituted or which reasonably would have been expected to cause or result in stabilization or manipulation of the price of any debt security of the Company or its subsidiaries in connection with the offering of the Securities.

2. Subject to the terms and conditions herein set forth, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price of 98.625% of the principal amount of the Notes plus accrued interest, if any, from November 18, 2010 to the Time of Delivery (as defined below) hereunder, the principal amount of Securities set forth opposite the name of such Underwriter in Schedule I hereto.

3. Upon the authorization by you of the release of the Securities, the several Underwriters propose to offer the Securities for sale upon the terms and conditions set forth in the Prospectus.



4. (a) The Securities to be purchased by each Underwriter hereunder will be represented by one or more definitive global Securities in book-entry form which will be deposited by or on behalf of the Company with The Depository Trust Company ("DTC") or its designated custodian. The Company will deliver the Securities to Merrill Lynch, Pierce, Fenner & Smith Incorporated, for the account of each Underwriter, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the account specified by the Company to Merrill Lynch, Pierce, Fenner & Smith Incorporated at least forty-eight hours in advance, by causing DTC to credit the Securities to the account of Merrill Lynch, Pierce, Fenner & Smith Incorporated at DTC. The Company will cause the certificates representing the Securities to be made available to Merrill Lynch, Pierce, Fenner & Smith Incorporated for checking at least twenty-four hours prior to the Time of Delivery (as defined below) at the office of DTC or its designated custodian (the "Designated Office"). The time and date of such delivery and payment shall be 9:30 a.m., New York City time, on November 18, 2010 or such other time and date as Merrill Lynch, Pierce, Fenner & Smith Incorporated and the Company

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may agree upon in writing. Such time and date are herein called the "Time of Delivery".

(b) The documents to be delivered at the Time of Delivery by or on behalf of the parties hereto pursuant to Section 8 hereof, including the cross-receipt for the Securities and any additional documents requested by the Underwriters pursuant to Section 8(j) hereof, will be delivered at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (the "Closing Location"), and the Securities will be delivered at the Designated Office, all at the Time of Delivery. A meeting will be held at the Closing Location and via teleconference at 5:30 p.m., New York City time, on the New York Business Day next preceding the Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. For the purposes of this Section 4, "New York Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

5. The Company agrees with each of the Underwriters:

(a) To prepare the Prospectus in a form approved by you and to file such Prospectus pursuant to Rule 424(b) under the Act not later than the Commission's close of business on the second business day following the date of this Agreement; to make no further amendment or any supplement to the Registration Statement, the Basic Prospectus or the Prospectus prior to the Time of Delivery which shall be disapproved by you promptly after reasonable notice thereof; to advise you, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any amendment or supplement to the Prospectus has been filed and to furnish you with copies thereof; to prepare a final term sheet, containing solely a description of the Securities, in a form approved by you and to file such term sheet pursuant to Rule 433(d) under the Act within the time required by such Rule; to file promptly all other material required to be filed by the Company with the Commission pursuant to Rule 433(d) under the Act; to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) is required in connection with the offering or sale of the Securities; to advise you, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus in respect of the Securities, of any notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Act, of the suspension of the qualification of the Securities for

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offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose or pursuant to Section 8A under the Act, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus or suspending any such qualification, to promptly use its commercially reasonable efforts to obtain the withdrawal of such order; and in the event of any such issuance of a notice of objection, promptly to take such steps including, without limitation, amending the Registration Statement or filing a new registration statement, at its own expense, as may be necessary to permit offers and sales of the Securities by the Underwriters (references herein to the Registration Statement shall include any such amendment or new registration statement);

(b) If required by Rule 430B(h) under the Act, to prepare a form of prospectus in a form approved by you and to file such form of prospectus pursuant to Rule 424(b) under the Act not later than may be required by Rule 424(b) under the Act; and to make no further amendment or supplement to such form of prospectus which shall be disapproved by you promptly after reasonable notice thereof;

(c) Promptly from time to time to take such action as you may reasonably request to qualify the Securities for offering and sale under the applicable securities laws of any state as you may reasonably request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Securities, provided that in connection therewith the Company shall not be required to (i) qualify as a foreign corporation or in any jurisdiction in which it would not otherwise be required to so qualify, (ii) file a general consent to service of process in any jurisdiction, (iii) subject itself to taxation in any jurisdiction in which it would not otherwise be subject and (iv) comply with any other requirements in connection with such qualifications that the company reasonably believes to be unduly burdensome;

(d) Prior to 10:00 a.m., New York City time, on the New York Business Day next succeeding the date of this Agreement and from time to time, to furnish the Underwriters with written and electronic copies of the Prospectus in New York City in such quantities as you may reasonably request, and, if the delivery of a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) is required at any time prior to the expiration of nine months after the time of issue of the Prospectus in connection with the offering or sale of the Securities and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which

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they were made when such Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Act, the Exchange Act or the Trust Indenture Act, to notify you and upon your request to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many written and electronic copies as you may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance; and in case any Underwriter is required to deliver a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) in connection with sales of any of the Securities at any time nine months or more after the time of issue of the Prospectus, upon your request but at the expense of such Underwriter, to prepare and deliver to such Underwriter as many written and electronic copies as you may reasonably request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the Act;

(e) To make generally available to its securityholders as soon as practicable, but in any event not later than sixteen months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158);

(f) During the period beginning from the date hereof and continuing to and including the later of the Time of Delivery and such earlier time as you may notify the Company, not to offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose of, except as provided hereunder of, any securities of the Company that are substantially similar to the Securities;

(g) To pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Act; and

(h) To use the net proceeds received by it from the sale of the Securities pursuant to this Agreement in the manner specified in the Pricing Prospectus and the Prospectus under the caption "Use of Proceeds."

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(a) (i) The Company represents and agrees that, other than the final term sheet prepared and filed pursuant to Section 5(a) hereof, without the prior consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, it has not

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made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Act;

(ii) each Underwriter represents and agrees that, without the prior consent of the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated other than (x) one or more term sheets relating to the Securities containing customary information and conveyed to prospective purchasers of Securities and (y) ordinary course communications with prospective purchasers of Securities that (i) do not contain "issuer information" within the meaning of Rule 433, (ii) do not contain information that conflicts with information in the Registration Statement, Pricing Disclosure Package and the Prospectus, and (iii) otherwise satisfy the requirements of Rule 433, it has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Act; and

(iii) any such free writing prospectus the use of which has been consented to by the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated (including the final term sheet prepared and filed pursuant to Section 5(a) hereof) is listed on Schedule II(a) hereto;

(b) The Company has complied and will comply with the requirements of Rule 433 under the Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending; and

(c) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus would conflict with the information in the Registration Statement, the Pricing Disclosure Package or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will give prompt notice thereof to Merrill Lynch, Pierce, Fenner & Smith Incorporated and, if requested by Merrill Lynch, Pierce, Fenner & Smith Incorporated, will prepare and furnish without charge to each Underwriter an Issuer Free Writing Prospectus or other document which will correct such conflict, statement or omission; provided, however, that this representation and warranty shall not apply to any statements or omissions in an Issuer Free Writing Prospectus made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter through Merrill Lynch, Pierce, Fenner & Smith Incorporated expressly for use therein.

7. The Company covenants and agrees with the several Underwriters that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Securities under the Act and all other

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expenses in connection with the preparation, printing, reproduction and filing of the Registration Statement, the Basic Prospectus, any Preliminary Prospectus, any Issuer Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any Agreement among Underwriters, this Agreement, the Indenture, the Blue Sky Memorandum, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities; (iii) all expenses in connection with the qualification of the Securities for offering and sale under state securities laws as provided in Section 5(d) hereof, including the fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky survey, which fees and disbursements of counsel will be approximately \$15,000; (iv) any fees charged by securities rating services for rating the Securities; (v) the cost of preparing the Securities; (vi) the fee of the Financial Industry Regulatory Authority, Inc. in connection with any required review by it of the terms of the sale of the Securities; (vii) the fees and expenses of the Trustee and any agent of the Trustee and the fees and disbursements of counsel for the Trustee in connection with the Indenture and the Securities; (viii) the investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including, without limitation, expenses associated with any electronic roadshow, travel and lodging expenses of Merrill Lynch, Pierce, Fenner & Smith Incorporated and officers of the Company and the reasonable cost of any aircraft chartered in connection with the road show; (ix) all fees and expenses (including fees and expenses of counsel) of the Company in connection with approval of the Notes by DTC for "book-entry" transfer; and (x) all other reasonable costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section, and Sections 9 and 12 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the Securities by them, and any advertising expenses connected with any offers they may make.

8. The obligations of the Underwriters hereunder shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company and the Guarantors herein are, at and as of the Time of Delivery, true and correct, the condition that the Company and the Guarantors shall have performed in all material respects all of its obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Act within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 5(a) hereof; the final term sheet contemplated by Section 5(a) hereof, and any other material required to be filed by the Company

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pursuant to Rule 433(d) under the Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose or pursuant to Section 8A under the Act shall have been initiated or threatened by the Commission and no notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Act shall have been received; no stop order suspending or preventing the use of the Prospectus or any Issuer Free Writing Prospectus shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to your reasonable satisfaction;

(b) The Underwriters shall have received from Latham & Watkins LLP, counsel for the Underwriters, an opinion letter and negative assurance letter, each dated the Time of Delivery in form and substance satisfactory to you and addressed to the Underwriters, with respect to such matters as the Underwriters may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters;

(c) Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Company, shall have furnished to you their written opinion and negative assurance letter (a draft of such opinion is attached as Annex I(a) hereto), dated the Time of Delivery, in form and substance reasonably satisfactory to you.

(d) Charles E. Baker, general counsel to the Company, shall have furnished to you his written opinion and negative assurance letter (a draft of such opinion is attached as Annex I(b) hereto), dated the Time of Delivery, in form and substance reasonably satisfactory to you.

(e) (i) On the date of the Prospectus at a time prior to the execution of this Agreement, (ii) at 9:30 a.m., New York City time, on the effective date of any post effective amendment to the Registration Statement filed subsequent to the date of this Agreement and also (iii) at the Time of Delivery, PricewaterhouseCoopers shall have furnished to you a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you, substantially in the form attached as Annex II hereto;

(f) (i) Neither the Company nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Pricing Disclosure Package, any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Disclosure Package (exclusive of any amendments or supplements thereto after

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the Applicable Time) and (ii) since the respective dates as of which information is given in the Pricing Disclosure Package there shall not have been any material adverse change in the capital stock or long term debt of the Company or any of its subsidiaries, taken as a whole, or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in the Pricing Disclosure Package (exclusive of any amendments or supplements thereto after the Applicable Time), the effect of which, in any such case described in clause (i) or (ii), is in your good faith judgment so material and adverse as to make it impracticable or inadvisable to proceed with the public offering, sale or the delivery of the Securities on the terms and in the manner contemplated in the Prospectus;

(g) On or after the Applicable Time (i) no downgrading shall have occurred in the rating accorded the Company's debt securities by any "nationally recognized statistical rating organization", as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities;

(h) On or after the Applicable Time there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange; (ii) a suspension or material limitation in trading in the Company's securities on the New York Stock Exchange; or (iii) a general moratorium on commercial banking activities declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in your judgment makes it impracticable or inadvisable to proceed with the public offering, sale or the delivery of the Securities on the terms and in the manner contemplated in the Prospectus;

(i) The Company shall have complied with the provisions of Section 5(d) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement; and

(j) The Company shall have furnished or caused to be furnished to you at the Time of Delivery certificates of officers of the Company satisfactory to you as to the accuracy of the representations and warranties of the Company

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herein at and as of such time, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to such time, as to the matters set forth in subsections (a) and (f) of this Section and as to such other matters as you may reasonably request.

9. (a) The Company and the Guarantors, jointly and severally, will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Basic Prospectus, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made not misleading, and will reimburse each Underwriter for any reasonable legal or other expenses incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company and the Guarantors shall not be liable in any such case to the extent that any such loss, claim, damage, liability or expense arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the Basic Prospectus, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, in reliance upon and in conformity with written information furnished to the Company by any Underwriter through Merrill Lynch, Pierce, Fenner & Smith Incorporated expressly for use therein.

(b) Each Underwriter, severally, but not jointly, will indemnify and hold harmless the Company and the Guarantors against any losses, claims, damages or liabilities to which the Company and the Guarantors may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Basic Prospectus, any

Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Basic Prospectus, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus or any such amendment or supplement thereto, or

any Issuer Free Writing Prospectus, in reliance upon and in conformity with written information furnished to the Company by such Underwriter through Merrill Lynch, Pierce, Fenner & Smith Incorporated, expressly for use therein; and will reimburse the Company and the Guarantors for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the failure by the indemnified party to so notify the indemnifying party shall relieve it from the obligations to indemnify the indemnified party under such subsection only to the extent the indemnifying party suffers actual prejudice as a result of such failure, but shall not relieve the indemnifying party from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, (i) without the written consent of the indemnified party (which consent shall not be unreasonably withheld), effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (1) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party or (ii) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with the consent of the indemnifying party or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

(d) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to therein other than by its terms, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors on the one hand and the Underwriters on the other from the offering of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Guarantors on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company and the Guarantors on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and the Guarantors on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Guarantors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any

person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the Company and the Guarantors under this Section 9 shall be in addition to any liability which the Company and the Guarantors may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act and each broker-dealer affiliate of any Underwriter; and the obligations of the Underwriters under this Section 9 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer of the Company and the Guarantors and each director of the Company and the Guarantors and to each person, if any, who controls the Company or any Guarantor within the meaning of the Act.

10. (a) If any Underwriter shall default in its obligation to purchase the Securities which it has agreed to purchase hereunder, you may in your discretion arrange for you or another party or other parties to purchase such Securities on the terms contained herein. If within thirty six hours after such default by any Underwriter you do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of thirty six hours within which to procure another party or other parties satisfactory to you to purchase such Securities on such terms. In the event that, within the respective prescribed periods, you notify the Company that you have so arranged for the purchase of such Securities, or the Company notifies you that it has so arranged for the purchase of such Securities, you or the Company shall have the right to postpone the Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in your opinion may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Securities.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate principal amount of such Securities which remains unpurchased does not exceed one twelfth of the aggregate principal amount of all the Securities, then the Company shall have the right to require each non-defaulting Underwriter to purchase the principal amount of Securities which such Underwriter agreed to purchase hereunder and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the principal amount of Securities which such Underwriter

agreed to purchase hereunder) of the Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate principal amount of Securities which remains unpurchased exceeds one twelfth of the aggregate principal amount of all the Securities, or if the Company shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Securities of a defaulting Underwriter or Underwriters, then this Agreement shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Company, except for the expenses to be borne by the Company and the Underwriters as provided in Section 7 hereof and the indemnity and contribution agreements in Section 9 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

11. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Guarantors and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, the Guarantors, each officer of the Company and the Guarantors and each director or controlling person of the Company and the Guarantors, and shall survive delivery of and payment for the Securities.

12. If this Agreement shall be terminated pursuant to Section 10 hereof, the Company shall not then be under any liability to any Underwriter except as provided in Sections 7 and 9 hereof; but, if for any other reason, the Securities are not delivered by or on behalf of the Company as provided herein, the Company will reimburse the Underwriters through you for all out of pocket expenses approved in writing by you, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Securities, but the Company and the Guarantors shall then be under no further liability to any Underwriter except as provided in Sections 7 and 9 hereof.

13. In all dealings hereunder, you shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by you or by Merrill Lynch, Pierce, Fenner & Smith Incorporated on behalf of you as the representative.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or

facsimile transmission to you as the Representative at One Bryant Park, New York, New York 10036 (fax: (646) 855-5958); Attention: Jami L. Friedman; and if to the Company shall be delivered or sent by mail, telex or facsimile transmission to the address of the Company set forth in the Registration Statement, Attention: Secretary; provided, however, that any notice to an Underwriter pursuant to Section 9(c) hereof shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its Underwriters' Questionnaire, or telex constituting such Questionnaire, which address will be supplied to the Company by you upon request. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the underwriters to properly identify their respective clients.

14. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Company, the Guarantors and, to the extent provided in Sections 9 and 11 hereof, the officers and directors of the Company, the Guarantors and each person who controls the Company or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Securities from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

15. Time shall be of the essence of this Agreement. As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

16. The Company and the Guarantors acknowledge and agree that (i) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between the Company and the Guarantors, on the one hand, and the several Underwriters, on the other, (ii) in connection therewith and with the process leading to such transaction each Underwriter is acting solely as a principal and not the agent or fiduciary of the Company and the Guarantors, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of the Company and the Guarantors with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or the Guarantors on other matters) or any other obligation to the Company and the Guarantors except the obligations expressly set forth in this Agreement and (iv) the Company and the Guarantors have consulted their own legal and financial advisors to the extent it deemed appropriate. The Company and the Guarantors

agree that they will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

17. This Agreement supersedes all prior agreements and understandings (whether written or oral) among the Company, the Guarantors and the Underwriters, or any of them, with respect to the subject matter hereof.

18. **This Agreement shall be governed by and construed in accordance with the laws of the State of New York.**

19. The Company, the Guarantors and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

20. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument.

21. Notwithstanding anything herein to the contrary, the Company is authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company relating to that treatment and structure, without the Underwriters, imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

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If the foregoing is in accordance with your understanding, please sign and return to us four counterparts hereof, and upon the acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof shall constitute a binding agreement between each of the Underwriters and the Company and the Guarantors. It is understood that your acceptance of this letter on behalf of each of the Underwriters is pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company for examination upon request, but without warranty on your part as to the authority of the signers thereof.

Very truly yours,

Ball Corporation

By: /s/ R. David Hoover  
Name: R. David Hoover  
Title: Chairman and Chief Executive Officer

Signature Page to Underwriting Agreement

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Ball Aerosol and Specialty Container Holding Corporation  
Ball Aerosol and Specialty Container Inc.  
Ball Metal Beverage Container Corp.  
Ball Metal Food Container Corp.  
Ball Metal Packaging Sales Corp.  
Ball Packaging Corp.  
Ball Plastic Container Corp.  
BG Holdings I, Inc.  
BG Holdings II, Inc.  
Latas de Aluminio Ball, Inc.  
USC May Verpackungen Holding Inc.  
Ball Corporation, a Nevada corporation  
Ball Glass Container Corporation  
Ball Glass Containers, Inc.  
Ball Metal Container Corporation

By: /s/ R. David Hoover  
Name: R. David Hoover  
Title: Authorized Signatory

Signature Page to Underwriting Agreement

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Ball Aerospace & Technologies Corp.  
Ball Technologies Holdings Corp.  
Efratom Holding, Inc.  
Ball Holdings Corp.

By: /s/ David L. Taylor  
Name: David L. Taylor  
Title: Authorized Signatory

Signature Page to Underwriting Agreement

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Ball Delaware Holdings, LLC

Ball Asia Services Limited  
Ball Metal Food Container, LLC  
Ball Pan-European Holdings, Inc.  
Metal Packaging International, Inc.  
Ball Container LLC  
Ball Holdings LLC

By: /s/ Charles E. Baker  
Name: Charles E. Baker  
Title: Authorized Signatory

Signature Page to Underwriting Agreement

Accepted as of the date hereof:

Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: /s/ William H. Pegler, Jr.  
Name: William H. Pegler, Jr.  
Title: Director

On behalf of each of the Underwriters

Signature Page to Underwriting Agreement

## SCHEDULE I

<u>Underwriter</u>	<u>Principal Amount of Notes to be Purchased</u>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$ 110,000,000
Goldman, Sachs & Co.	\$ 85,000,000
Deutsche Bank Securities Inc.	\$ 65,000,000
J.P. Morgan Securities LLC	\$ 50,000,000
Barclays Capital Inc.	\$ 45,000,000
RBS Securities Inc.	\$ 35,000,000
KeyBanc Capital Markets Inc.	\$ 35,000,000
Wells Fargo Securities, LLC	\$ 35,000,000
BNP Paribas Securities Corp.	\$ 10,000,000
US Bancorp Investments, Inc.	\$ 10,000,000
Rabo Securities USA, Inc.	\$ 10,000,000
Commerz Markets LLC	\$ 10,000,000
Total	<u>\$ 500,000,000</u>

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## SCHEDULE II

### Guarantors

Ball Aerosol and Specialty Container Holding Corporation  
Ball Aerosol and Specialty Container Inc.  
Ball Aerospace & Technologies Corp.  
Ball Delaware Holdings, LLC  
Ball Metal Beverage Container Corp.  
Ball Metal Food Container Corp.  
Ball Metal Food Container, LLC  
Ball Metal Packaging Sales Corp.  
Ball Packaging Corp.  
Ball Pan-European Holdings, Inc.  
Ball Plastic Container Corp.  
Ball Technologies Holdings Corp.  
BG Holdings I, Inc.  
BG Holdings II, Inc.  
Efratom Holding, Inc.  
Metal Packaging International, Inc.  
USC May Verpackungen Holding Inc.  
Ball Asia Services Limited

Ball Corporation, a Nevada corporation  
Ball Glass Container Corporation  
Ball Glass Containers, Inc.  
Ball Holdings Corp.  
Ball Metal Container Corporation  
Latas de Aluminio Ball, Inc.  
Ball Container LLC  
Ball Holdings LLC

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**SCHEDULE III**  
**PRICING TERM SHEET**

A-1(a)

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**Issuer Free Writing Prospectus filed pursuant to Rule 433**  
**Supplementing the Preliminary Prospectus Supplement dated November 15, 2010**  
**Registration Statement 333-157537**  
**November 15, 2010**

**\$500,000,000**

**Ball Corporation**

**5<sup>3</sup>/<sub>4</sub>% Senior Notes due 2021**

**November 15, 2010**

Pricing Supplement dated November 15, 2010 to the Preliminary Prospectus Supplement dated November 15, 2010 of Ball Corporation. This Pricing Supplement relates only to the securities described below and is qualified in its entirety by reference to the Preliminary Prospectus Supplement. The information in this Pricing Supplement supplements the Preliminary Prospectus Supplement and supersedes the information in the Preliminary Prospectus Supplement only to the extent it is inconsistent with the information contained in the Preliminary Prospectus Supplement. Capitalized terms used in this Pricing Supplement but not defined have the meanings given them in the Preliminary Prospectus Supplement.

<b>Issuer:</b>	Ball Corporation
<b>Title of Securities:</b>	5 <sup>3</sup> / <sub>4</sub> % Senior Notes due 2021
<b>Offering Size:</b>	\$500,000,000, which represents an increase of \$100,000,000 from the amount offered under the Preliminary Prospectus Supplement dated November 15, 2010.
<b>Trade Date:</b>	November 15, 2010
<b>Expected Settlement Date:</b>	November 18, 2010 (T+3)
<b>Maturity Date:</b>	May 15, 2021
<b>Coupon:</b>	5 <sup>3</sup> / <sub>4</sub> %
<b>Price to Public:</b>	100.000%
<b>Yield Per Annum:</b>	5.750%
<b>Net Proceeds (before Expenses)</b>	\$493,125,000
<b>Interest Payment Dates:</b>	May 15 and November 15
<b>First Interest Payment Date:</b>	May 15, 2011
<b>Record Dates:</b>	May 1 and November 1

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**Optional Redemption:** Make-whole at T+50, plus accrued and unpaid interest, until November 15, 2015

At any time on or after November 15, 2015, the Issuer may redeem the Notes at its option, in whole or from time to time in part, upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest, if any, to the redemption date, if redeemed during the 12-month period commencing on November 15 of the years set forth below:

<b>Date</b>	<b>Price</b>
2015	102.875%
2016	101.917%



2017	100.958%
2018 and thereafter	100.000%

**Optional Redemption with Net Cash Proceeds of Equity Offerings:**

At any time prior to November 15, 2013, the Issuer may redeem at its option, on one or more occasions, in the aggregate up to 35% of the aggregate principal amount of the Notes, including additional notes, if any, issued under the indenture at 105.750%, plus accrued and unpaid interest to the redemption date; *provided* that at least 65% of the aggregate principal amount of the Notes, including additional notes, if any, issued under the indenture remain outstanding after each such redemption, excluding Notes held by the Issuer and its Subsidiaries.

**Change of Control:**

101%, plus accrued and unpaid interest

**Joint Book-Running Managers:**

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Goldman, Sachs & Co.  
Deutsche Bank Securities Inc.  
J.P. Morgan Securities LLC  
Barclays Capital Inc.

**Co-managers:**

RBS Securities Inc.  
KeyBanc Capital Markets Inc.  
Wells Fargo Securities, LLC  
BNP Paribas Securities Corp.  
US Bancorp Investments, Inc.  
Rabo Securities USA, Inc.  
Commerz Markets LLC

**CUSIP/ISIN Numbers:**

CUSIP: 058498 AQ9  
ISIN: US058498AQ98

**Use of Proceeds:**

We intend to use the net proceeds from this offering to repay the borrowings under our U.S. dollar denominated secured term loan facility and for general corporate purposes, which may include potential investments in strategic alliances and

acquisitions, the refinancing or repayment of debt, working capital, share repurchases or capital expenditures.

**Additional Changes to the Preliminary Prospectus Supplement:**

**Capitalization:**

As Adjusted information set forth on page S-20 of the Preliminary Prospectus Supplement dated November 15, 2010 is revised as follows: (amounts in millions)

Cash and cash equivalents shall be increased from \$262.2 to \$360.8.

The Notes offered hereby shall be increased from \$400.0 to \$500.0.

Total long-term debt, including current portion shall be increased from \$2,680.4 to \$2,780.4.

Total capitalization shall be increased from \$4,420.8 to \$4,520.8.

The issuer has filed a registration statement (including a prospectus dated February 26, 2009) and a preliminary prospectus supplement dated November 15, 2010 with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the preliminary prospectus supplement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at [www.sec.gov](http://www.sec.gov). Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus, when available, if you request it by emailing [dg.Prospectus\\_Requests@baml.com](mailto:dg.Prospectus_Requests@baml.com) or by calling toll-free 1-800-294-1322.

**SCHEDULE IV**

(a) Issuer Free Writing Prospectuses not included in the Pricing Disclosure Package

(b) Additional Documents Incorporated by Reference

**ANNEX I(a)**

Form of Opinion - Skadden, Arps, Slate, Meagher & Flom LLP

1. The Indenture is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions;

2. When the Notes have been duly authenticated by the Trustee and issued and delivered by the Company against payment therefor in accordance with the terms of the Underwriting Agreement and the Indenture, the Notes will constitute valid and binding obligations of the Company entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions;
3. The Guarantees by the Delaware Guarantors have been duly authorized and executed by each respective Delaware Guarantor, and when the Notes have been duly authenticated by the Trustee and the Guarantees are issued and delivered by the Guarantors against payment therefor in accordance with the terms of the Underwriting Agreement and the Indenture, the Guarantees will constitute valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms, subject to the Enforceability Exceptions;
4. The Indenture and the Underwriting Agreement have been duly authorized, executed and delivered by each of the Delaware Guarantors;
5. The statements in the Pricing Disclosure Package and Prospectus under the caption "Description of Notes," other than "Book Entry, Delivery and Form" and "Depository Procedures" insofar as such statements purport to summarize certain provisions of the Indenture, the Notes and the Guarantees, fairly summarize such provisions in all material respects;
6. The statements in the Pricing Disclosure Package and Prospectus under the caption "Description of Other Indebtedness," insofar as such statements purport to summarize certain provisions of the documents referred to therein, fairly summarize such provisions in all material respects;
7. The Company is not and, solely after giving effect to the offering and sale of the Notes and the application of the proceeds as described in the Prospectus, will not be an "investment company" as such term is defined in the Investment Company Act of 1940;
8. No Governmental Approval, which has not been obtained or taken and is not in full force and effect, is required to authorize, or is required for, the execution or delivery of

each of the Transaction Documents by the Company or the consummation by the Company of the transactions contemplated thereby;

9. The execution and delivery by the Company of each of the Transaction Documents and the consummation by the Company of the transactions contemplated thereby, including the issuance and sale of the Notes and the Guarantees, will not (i) violate or conflict with, or result in any contravention of, any Applicable Law or any Applicable Order or (ii) constitute a violation of, or a breach or default under, the terms of any Applicable Contract. Such counsel need not express any opinion, however, as to whether the execution, delivery or performance by the Company of each of the Transaction Documents will constitute a violation of, or a default under, any covenant, restriction or provision with respect to financial ratios or tests or any aspect of the financial condition or results of operations of the Company or any of its subsidiaries.
10. The statements in the Pricing Disclosure Package and Prospectus under the caption "Underwriting," insofar as such statements purport to summarize certain provisions of the Underwriting Agreement, fairly summarize such provisions in all material respects.
11. Based upon and subject to the foregoing, we are of the opinion that under current U.S. federal income tax law, although the discussion set forth in the Pricing Disclosure Package and the Prospectus under the heading "Material U.S. Federal Income Tax Consequences" does not purport to discuss all possible U.S. federal income tax consequences of the purchase, ownership or disposition of the Securities, such discussion constitutes, in all material respects, a fair and accurate summary of the U.S. federal income tax consequences that are anticipated to be material to holders who purchase the Securities pursuant to the Prospectus, subject to the qualifications set forth in such discussion.
12. Assuming the accuracy of the representations and warranties of the Company set forth in Section 1 of the Underwriting Agreement, the Registration Statement became effective upon filing with the Commission pursuant to Rule 462 of the Securities Act and, pursuant to Section 309 of the Trust Indenture Act, the Indenture has been qualified under the Trust Indenture Act, and we have been orally advised by the Commission that no stop order suspending the effectiveness of the Registration Statement has been issued and, to our knowledge, no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

Such counsel shall also state that they have participated in conferences with officers and other representatives of the Company, representatives of the independent registered public accountants of the Company and the representative of the Underwriters and counsel for the Underwriters at which the contents of the Registration Statement, the Prospectus, the Pricing Disclosure Package and related matters were discussed. Such counsel did not participate in the preparation of the Incorporated Documents, but have, however, reviewed such documents and discussed the business and affairs of the Company with officers and other representatives of the Company. Such counsel does not pass upon, or assume responsibility for, the accuracy,

completeness or fairness of statements contained or incorporated by reference in the Registration Statement, the Prospectus or the Pricing Disclosure Package and have made no independent check or verification thereof (except to the limited extent referred to in paragraphs 5, 6, 10 and 11 above).

On the basis of the foregoing, (i) the Registration Statement, at the Effective Time, and the Prospectus, as of the date of the Prospectus Supplement, appeared on their face to be appropriately responsive in all material respects to the requirements of the Securities Act (except that in each case such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom or the Statement of Eligibility on Form T-1 (the "Form T-1")) and (ii) no facts have come to the attention of such counsel that have caused such counsel to believe that the Registration Statement, at the Effective Time, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, as of the date of the Prospectus Supplement and as of the date hereof contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that in each case such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom, the report of management's assessment of the effectiveness of internal controls over financial reporting or the auditors' attestation report thereon, or the statements contained in the exhibits to the Registration Statement, including the Form T-1). In addition, on the basis of the foregoing, no facts have come to such counsel's attention that have caused such counsel to believe that the Pricing Disclosure Package, as of the Applicable Time, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom, the report of management's assessment of the effectiveness of internal controls over financial reporting or the auditors' attestation report thereon, or the statements contained in the exhibits to the Registration Statement, including the Form T-1).

In rendering the opinions set forth above, Skadden, Arps, Slate, Meagher & Flom LLP may (i) state that such opinion is limited to Applicable Law and (ii) rely (to the extent such counsel deems proper and specifies in their opinion) as to matters involving the application of laws covered by supporting opinion upon the opinion of other counsel of good standing, *provided* that such other counsel is reasonably satisfactory to counsel for the Underwriters and furnishes a copy of its opinion to the Underwriters. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied upon certificates of officers of the Company and its subsidiaries and certificates of public officials.

“Applicable Law” means the General Corporation Law of the State of Delaware and those laws, rules and regulations of the State of New York and those federal laws, rules and regulations of the United States of America, in each case that, in our experience, are normally applicable to transactions of the type contemplated by the Transaction Documents (other than the United States federal securities laws, state securities or blue sky laws, antifraud laws and the rules and regulations of the Financial Industry Regulatory Authority, Inc.), but without our having made any special investigation as to the applicability of any specific law, rule or regulation.

“Applicable Order” means those judgments, orders or decrees identified on Schedule I to the Company’s Certificate.

“Applicable Contract” means (i) the Senior Note Indenture dated as of March 27, 2006, by and among Ball Corporation and the Bank of New York Trust Company N.A. (filed by incorporation by reference to the Current Report on Form 8-K dated March 27, 2006) filed March 30, 2006; the First Supplemental Indenture dated March 27, 2006, among Ball Corporation, the guarantors named therein and The Bank of New York Trust Company, N.A. (filed as Exhibit 4.2 to the Current Report on Form 8-K, dated March 27, 2006) filed March 30, 2006; the Second Supplemental Indenture dated August 20, 2009, among Ball Corporation, the guarantors named therein and The Bank of New York Mellon Trust Company, N.A. (filed as Exhibit 4.2 to the Current Report on Form 8-K, dated August 20, 2009) filed August 26, 2009; the Third Supplemental Indenture dated August 20, 2009, among Ball Corporation, the guarantors named therein and The Bank of New York Mellon Trust Company, N.A. (filed as Exhibit 4.3 to the Current Report on Form 8-K, dated August 20, 2009) filed August 26, 2009; and the Fourth Supplemental Indenture dated March 22, 2010, among Ball Corporation, the guarantors named therein and The Bank of New York Mellon Trust Company, N.A. (filed as Exhibit 4.2 to the Current Report on Form 8-K, dated March 17, 2010) filed March 23, 2010; (ii) the Credit agreement dated October 13, 2005, among Ball Corporation, Ball European Holdings S.a.r.l., Ball Packaging Products Canada Corp. and each Other Subsidiary Borrower, Deutsche Bank AG, New York Branch, as a Lender, Administrative Agent and Collateral Agent and The Bank of Nova Scotia, as the Canadian Administrative Agent (filed as Exhibit 99.2 to Ball Corporation’s Current Report on Form 8-K dated October 17, 2005, filed on October 17, 2005). First Amendment to Credit Agreement by and between Ball Corporation, Ball European Holdings S.a.r.l., the financial institutions signatory thereto in their capacity as lenders and Deutsche Bank AG, New York Branch, as Administrative Agent for the lenders with Deutsche Bank Securities Inc. and J.P. Morgan Securities Inc., as joint lead arrangers for the Term D Loans (filed as Exhibit 10.1 to Ball Corporation’s Current Report on Form 8-K dated March 27, 2006, filed on March 30, 2006). Second Amendment to Credit Agreement by and between Ball Corporation, Ball European Holdings S.a.r.l., the financial institutions signatory thereto in their capacity as lenders and Deutsche Bank AG New York Branch, as Administrative Agent for the lenders (filed as Exhibit 10.1 to Ball Corporation’s Current Report on Form 8-K dated July 31, 2009, filed on August 4 2009). Third Amendment to Credit Agreement by and between Ball Corporation, Ball European Holdings S.a.r.l., the financial institutions signatory thereto in their

capacity as lenders and Deutsche Bank AG New York Branch, as Administrative Agent for the lenders (filed as Exhibit 10.2 to Ball Corporation’s Quarterly Report on Form 10-Q for the quarterly period ended March 28, 2010, filed on April 30, 2010) and (iii) the Subsidiary Guaranty Agreement dated as of October 13, 2005, among certain domestic subsidiaries listed therein as Guarantors, and Deutsche Bank AG, New York Branch, as Administrative Agent (filed by incorporation by reference to the Current Report on Form 8-K dated October 17, 2005) filed October 17, 2005 (the “Guaranty Agreement”).

“Applicable Time” means 3:15 p.m. (Eastern time) on November 15, 2010, which you advised us is the time of the first contract of sale of the Notes.

“Effective Time” means the time of effectiveness of the Registration Statement for purposes of Section 11 of the Securities Act, as such section applies to the Underwriters.

“Enforceability Exceptions” means that the validity or enforcement of any agreements or instruments may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and such counsel need not express any opinion as to the applicability or effect of any fraudulent transfer, preference or similar law on each of the Transaction Documents or any transaction contemplated thereby.

“Pricing Disclosure Package” means the Pricing Prospectus (as defined in the Underwriting Agreement) as supplemented by the final term sheet contemplated by Section 5(a) of the Underwriting Agreement, which will be filed pursuant to Rule 433(d) under the Act, substantially in the form attached as Schedule III to the Underwriting Agreement, taken together.

“Governmental Approval” means any consent, approval, license, authorization or validation of, or filing, qualification or registration with, any Governmental Authority required to be made or obtained by the Company pursuant to Applicable Laws, other than any consent, approval, license, authorization, validation, filing, qualification or registration that may have become applicable as a result of the involvement of any party (other than the Company) in the transactions contemplated by the Underwriting Agreement and the other Transaction Documents or because of such parties’ legal or regulatory status or because of any other facts specifically pertaining to such parties

“Governmental Authority” means any court, regulatory body, administrative agency or governmental body of the State of New York or the United States of America having jurisdiction over the Company under Applicable Laws.

“Incorporated Documents” means the documents identified on Schedule A to such counsel’s opinion filed by the Company pursuant to the Securities Exchange Act of 1934 and incorporated by reference into the Prospectus as of the date of such opinion.

“Base Prospectus” means the prospectus, dated February 26, 2009, which was included in the Registration Statement on the date it was filed.

“Preliminary Prospectus” means the preliminary prospectus supplement, dated November 15, 2010, together with the Base Prospectus and the Incorporated Documents, relating to the offering of the Notes in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations.

“Prospectus” means the Prospectus Supplement, the Base Prospectus and the Incorporated Documents, relating to the offering of the Notes in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations.

“Prospectus Supplement” means the prospectus supplement, dated November 15, 2010, relating to the offering of the Notes in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations.

“Registration Statement” means the registration statement on Form S-3 (File No. 333-157537) of the Company relating to the securities filed on February 26, 2009 with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933 (the “Securities Act”), allowing for delayed offerings pursuant to Rule 415 under the Securities Act, and Post-Effective Amendment No. 1 thereto filed on August 10, 2009, including the Incorporated Documents and the information deemed to be a part of the registration statement pursuant to Rule 430B of the General Rules and Regulations under the Securities Act (the “Rules and Regulations”).

“Transaction Documents” means the Underwriting Agreement, the Notes, the Indenture and the Guarantees.

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ANNEX I(b)

Form of Opinion — General Counsel

1. The Company has been duly incorporated and is validly existing in good standing under the laws of the State of Indiana, with all requisite power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as presently conducted;
2. The Company is duly qualified as a foreign corporation to transact business and is in good standing (except in those jurisdictions where the concept of good standing is not recognized) under the laws of each jurisdiction in which the conduct of its business requires such qualification, except where the failure to qualify or to be in good standing would not reasonably be expected to result in a Material Adverse Change;
3. All the outstanding shares of capital stock of the Company have been authorized and validly issued and are fully paid and nonassessable;
4. Each Restricted Subsidiary (as defined in the Indenture) has been duly incorporated or formed and is validly existing in good standing (except in those jurisdictions where the concept of good standing is not recognized) under the laws of the jurisdiction of its organization, with all requisite power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as presently conducted;
5. Each Restricted Subsidiary is duly qualified to do business as a foreign corporation or limited liability company and is in good standing (except in those jurisdictions where the concept of good standing is not recognized) as a foreign corporation or limited liability company under the laws of each jurisdiction in which the conduct of its business requires such qualification, except where the failure to qualify or to be in good standing would not reasonably be expected to result in a Material Adverse Change;
6. As of the date hereof, all of the outstanding shares of capital stock of the Guarantors have been authorized and validly issued and are fully paid and nonassessable and are owned of record by the Company or other Guarantors, free and clear of any security interests, liens, adverse claims or other encumbrances other than under the Existing Credit Facilities (as defined in the Indenture);
7. The Underwriting Agreement has been duly authorized, executed and delivered by the Company and each of the Guarantors;
8. The Indenture has been duly authorized, executed and delivered by the Company and each of the Guarantors;

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9. The Notes have been duly authorized, executed and delivered by the Company;
10. The Guarantees have been duly authorized and executed by the Guarantors;
11. To my knowledge, there is no pending or threatened action, suit or proceeding by or before any court, regulatory body, administrative agency or governmental body involving the Company or any of the Guarantors or its or their property that is not disclosed in the Prospectus and the Pricing Disclosure Package and is reasonably likely to result in a Material Adverse Change or materially affect the issuance of the Securities or the consummation of the transactions contemplated by the Underwriting Agreement;
12. Neither the execution, delivery or performance by the Company or any Guarantor of the Transaction Documents to which it is a party, nor compliance by the Company or any Guarantors with the terms and provisions thereof, (i) conflicts with or results in any breach of any of the terms, covenants, conditions or provisions of, or constitutes a default under, or results in the creation or imposition of any lien upon any of the property or assets of the Company or such Guarantor pursuant to the terms of the Existing Indentures, the Existing Credit Facilities or any other material agreement, contract or instrument (in each case which is known to me) to which the Company or such Guarantor is a party or by which the Company or such Guarantor or any of its properties or assets are bound or may be subject; (ii) will violate any provision of the Charter Documents; (iii) will violate or conflict with, or result in the contravention of any Applicable Law; or (iv) to my knowledge, will contravene any order, writ, injunction or decree of any court or governmental authority to which the Company or such Guarantor is subject (it being understood that (A) I have not caused a search to be made of the records of any court or other tribunal or governmental instrumentality and (B) I am not aware of any order, writ, injunction or decree that would be contravened as referred to above).

Such counsel shall also state that he has participated in conferences with officers and other representatives of the Company, counsel for the Company, representatives of the independent registered public accountants of the Company and the representative of the Underwriters and counsel for the Underwriters at which the contents of the Registration Statement, the Prospectus, the Pricing Disclosure Package and related matters were discussed. Such counsel does not pass upon, or assume responsibility for, the accuracy, completeness or fairness of statements contained or incorporated by reference in the Registration Statement, the Prospectus or the Pricing Disclosure Package and has made no independent check or verification thereof.

On the basis of the foregoing, (i) the Registration Statement, at the Effective Time, and the Prospectus, as of the date of the Prospectus Supplement, appeared on their face to be appropriately responsive in all material respects to the requirements of the Securities Act (except that in each case such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference

therein or excluded therefrom or the Statement of Eligibility on Form T-1 (the "Form T-1")) and (ii) no facts have come to the attention of such counsel that have caused such counsel to believe that the Registration Statement, at the Effective Time, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, as of the date of the Prospectus Supplement and as of the date hereof contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that in each case such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom, the report of management's assessment of the effectiveness of internal controls over financial reporting or the auditors' attestation report thereon, or the statements contained in the exhibits to the Registration Statement, including the Form T-1). In addition, on the basis of the foregoing, no facts have come to such counsel's attention that have caused such counsel to believe that the Pricing Disclosure Package, as of the Applicable Time, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that such counsel need not express any view as to the financial statements, schedules and other financial information included or incorporated by reference therein or excluded therefrom, the report of management's assessment of the effectiveness of internal controls over financial reporting or the auditors' attestation report thereon, or the statements contained in the exhibits to the Registration Statement, including the Form T-1).

In rendering the opinions set forth above, such counsel may (i) state that such opinion is limited to Applicable Law, (ii) rely (to the extent such counsel deems proper and specifies in their opinion) as to matters involving the application of laws covered by supporting opinion upon the opinion of other counsel of good standing, *provided* that such other counsel is satisfactory to counsel for the Underwriters and furnishes a copy of its opinion to the Underwriters, and (iii) state that such opinion with respect to Nevada corporate laws are limited to the official statutory text thereof as it appears on the date of such opinion in the Corporation Statutes compilation, published by Aspen Law and Business, and state that such counsel is assuming that Nevada corporate laws are substantively similar to the Colorado Business Corporation Act. As to any facts material to the opinions set forth above that such counsel did not independently establish or verify, such counsel may state that he has relied upon statements and representations of officers and other representatives of the Company and its subsidiaries and others and of public officials.

"Applicable Law" means those laws, rules and regulations of the States of Colorado, Nevada and Indiana and the federal laws, rules and regulations of the United States of America, in each case that, in such counsel's experience, are normally applicable to transactions of the type contemplated by the Transaction Documents (other than the United States federal securities laws, state securities or blue sky laws, antifraud laws and the rules and regulations

of the Financial Industry Regulatory Authority, Inc.), but without such counsel having made any special investigation as to the applicability of any specific law, rule or regulation.

"Applicable Time" means 3:15 p.m. (Eastern time) on November 15, 2010, which you advised us is the time of the first contract of sale of the Notes.

"Base Prospectus" means the prospectus, dated February 26, 2009, which forms a part of and is included in the Registration Statement, in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations.

"Charter Documents" means (1) the articles of incorporation and the bylaws of the Company, (2) the articles or certificate of incorporation and the bylaws of the Guarantors that are corporations and (3) the certificates of formation and the limited liability company agreements or operating agreements of each of the Guarantors that are limited liability companies.

"Effective Time" means the time of effectiveness of the Registration Statement for purposes of Section 11 of the Securities Act, as such section applies to the Underwriters.

"Existing Indentures" means the Senior Note Indenture dated as of March 27, 2006, by and among Ball Corporation and the Bank of New York Trust Company N.A. (filed by incorporation by reference to the Current Report on Form 8-K dated March 27, 2006) filed March 30, 2006; the First Supplemental Indenture dated March 27, 2006, among Ball Corporation, the guarantors named therein and The Bank of New York Trust Company, N.A. (filed as Exhibit 4.2 to the Current Report on Form 8-K, dated March 27, 2006) filed March 30, 2006; the Second Supplemental Indenture dated August 20, 2009, among Ball Corporation, the guarantors named therein and The Bank of New York Mellon Trust Company, N.A. (filed as Exhibit 4.2 to the Current Report on Form 8-K, dated August 20, 2009) filed August 26, 2009; the Third Supplemental Indenture dated August 20, 2009, among Ball Corporation, the guarantors named therein and The Bank of New York Mellon Trust Company, N.A. (filed as Exhibit 4.3 to the Current Report on Form 8-K, dated August 20, 2009) filed August 26, 2009; and the Fourth Supplemental Indenture dated March 22, 2010, among Ball Corporation, the guarantors named therein and The Bank of New York Mellon Trust Company, N.A. (filed as Exhibit 4.2 to the Current Report on Form 8-K, dated March 17, 2010) filed March 23, 2010.

"Incorporated Documents" means the documents identified on Schedule A to such counsel's opinion filed by the Company pursuant to the Securities Exchange Act of 1934 and incorporated by reference into the Prospectus as of the date of such opinion.

"Preliminary Prospectus" means the preliminary prospectus supplement, dated November 15, 2010, together with the Base Prospectus and the Incorporated Documents.

"Pricing Disclosure Package" means the Pricing Prospectus (as defined in the Underwriting Agreement) as supplemented by the final term sheet contemplated by Section 5(a) of the Underwriting Agreement, which will be filed pursuant to Rule 433(d) under the Act,

substantially in the form attached as Schedule III to the Underwriting Agreement, taken together.

"Prospectus" means the Prospectus Supplement, the Base Prospectus and the Incorporated Documents, relating to the offering of the Notes in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations.

"Prospectus Supplement" means the prospectus supplement, dated November 15, 2010, relating to the offering of the Notes in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations.

"Registration Statement" means the registration statement on Form S-3 (File No. 333-157537) of the Company relating to the securities filed on February 26, 2009 with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933 (the "Securities Act"), allowing for delayed offerings pursuant to Rule 415 under

“Transaction Documents” means the Underwriting Agreement, the Notes, the Indenture and the Guarantees.

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ANNEX II

Comfort Letter

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*This draft is furnished solely for the purpose of indicating the form of letter that we would expect to be able to furnish Bank of America Merrill Lynch “BofAML” in response to their request, the matters expected to be covered in the letter, and the nature of the procedures that we would expect to carry out with respect to such matters. Based on our discussions with BofAML, it is our understanding that the procedures outlined in this draft letter are those they wish us to follow. Unless BofAML inform us otherwise, we shall assume that there are no additional procedures they wish us to follow. The text of the letter itself will depend, of course, on the results of the procedures, which we would not expect to complete until shortly before the letter is given and in no event before the cutoff date indicated therein.*

[PwC letterhead]

November 15, 2010

Ball Corporation  
10 Longs Peak Drive  
Broomfield, Colorado 80021

and

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
One Bryant Park  
New York, NY 10036

as representatives of the several underwriters, listed on Schedule I to the Underwriting Agreement

Ladies and Gentlemen:

We have audited:

1. the consolidated financial statements of Ball Corporation (the “Company”) and subsidiaries as of December 31, 2009 and 2008 and for each of the three years in the period ended December 31, 2009 included in the Company’s annual report on Form 10-K for the year ended December 31, 2009 (the “Form 10-K”) and
2. the effectiveness of the Company’s internal control over financial reporting as of December 31, 2009.

The consolidated financial statements referred to above are all incorporated by reference in the registration statement (No. 333-157537) on Form S-3 filed by the Company under the Securities Act of 1933 (the “Act”); our report with respect thereto, which contains an explanatory paragraph on the effectiveness of internal control over financial reporting due to the exclusion of certain elements of the internal control over financial reporting of four Anheuser-Busch InBev’s n.v./s.a. manufacturing plants (“AB InBev plants”) that were acquired by the Company in a purchase business combination in 2009, is also incorporated by reference in such registration statement. Such registration statement and the preliminary prospectus supplement dated November 15, 2010 is herein referred to as the “Registration Statement.”

In connection with the Registration Statement:

1. We are an independent registered public accounting firm with respect to the Company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the Securities and Exchange Commission (“SEC”) and the Public Company Accounting Oversight Board (United States) (“PCAOB”).
2. In our opinion, the consolidated financial statements audited by us and incorporated by reference in the Registration Statement comply as to form in all material respects with the applicable accounting requirements of the Act and the Securities Exchange Act of 1934 and the related rules and regulations adopted by the SEC. However, it should be noted that the Company has not retrospectively adjusted its consolidated financial statements as of December 31, 2009 and 2008 and for each of the three years in the period ended December 31, 2009 to reflect the divestiture of the plastics packaging, Americas, segment as a discontinued operation in accordance with ASC 205, “Presentation of Financial Statements”.
3. We have not audited any financial statements of the Company as of any date or for any period subsequent to December 31, 2009; although we have conducted an audit for the year ended December 31, 2009, the purpose (and therefore the scope) of such audit was to enable us to express our opinion on the consolidated financial statements as of December 31, 2009 and for the year then ended, but not on the financial statements for any interim period within such year. Therefore, we are unable to and do not express any opinion on the unaudited condensed consolidated balance sheets and the unaudited condensed consolidated statements of income and of cash flows included in the Company’s quarterly reports on Form 10-Q for the quarters ended March 28, 2010, June 27, 2010 and September 26, 2010 incorporated by reference in the Registration Statement, or on the financial position, results of operations or cash flows as of any date or for any period subsequent to December 31, 2009. Also, we have not audited the Company’s internal control over financial reporting as of any date subsequent to December 31, 2009. Therefore, we do not express any opinion on the Company’s internal control over financial reporting as of any date subsequent to December 31, 2009.
4. For purposes of this letter, we have read the minutes of the 2010 meetings of the Board of Directors, the Audit Committee, the Finance Committee and the Human Resources Committee of the Company and its subsidiaries as set forth in the minute books at November 12, 2010, officials of the Company having advised us that the

minutes of all such meetings through that date were set forth therein, and have carried out other procedures to November 12, 2010 (our work did not extend to the period from November 13, 2010 to November 15, 2010, inclusive) as follows:

- a. With respect to the three-month periods ended March 28, 2010 and March 29, 2009, the three- and six-month periods ended June 27, 2010 and June 28, 2009 and the three- and nine-month periods ended September 26, 2010 and September 27, 2009, we have:
  - (i) performed the procedures (completed on April 30, 2010, August 4, 2010 and November 3, 2010, respectively) specified by the PCAOB for a review of interim financial information as described in PCAOB AU 722, *Interim Financial Information*, on the unaudited condensed consolidated financial statements as of and for the three-month periods ended March 28, 2010 and March 29, 2009, as of and for the three- and six-month periods ended June 27, 2010 and June 28, 2009 and as of and for the three- and nine-month periods ended September 26, 2010 and September 27, 2009 included in the Company's quarterly report on Form 10-Q for the quarters ended March 28, 2010, June 27, 2010 and September 26, 2010, incorporated by reference in the Registration Statement; and
  - (ii) inquired of certain officials of the Company who have responsibility for financial and accounting matters whether the unaudited condensed consolidated financial statements referred to in a.(i) above comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC.
- b. With respect to the period from September 27, 2010 to October 24, 2010, we have:
  - (i) read the unaudited consolidated financial data of the Company and subsidiaries for October of both 2010 and 2009 furnished us by the Company, officials of the Company

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having advised us that no such financial data as of any date or for any period subsequent to October 24, 2010 were available. The financial information for October of both 2010 and 2009 is incomplete in that it omits the statement of cash flows and other disclosures.

- (ii) inquired of certain officials of the Company who have responsibility for financial and accounting matters as to whether the unaudited consolidated financial data referred to in b.(i) above are stated on a basis substantially consistent with that of the audited consolidated financial statements incorporated by reference in the Registration Statement.

The foregoing procedures do not constitute an audit conducted in accordance with standards of the PCAOB. Also, they would not necessarily reveal matters of significance with respect to the comments in the following paragraph. Accordingly, we make no representations as to the sufficiency of the foregoing procedures for your purposes.

5. Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that:

- a. (i) Any material modifications should be made to the unaudited condensed consolidated financial statements described in 4.a.(i), incorporated by reference in the Registration Statement, for them to be in conformity with generally accepted accounting principles. However, it should be noted that the Company has not retrospectively adjusted the unaudited condensed consolidated financial statements included in its Quarterly Report on Form 10-Q for the quarter ended March 28, 2010, which is incorporated by reference in the Registration Statement, to reflect the divestiture of the plastics packaging, Americas, segment as a discontinued operation in accordance with ASC 205, "Presentation of Financial Statements".
- (ii) The unaudited condensed consolidated financial statements described in 4.a.(i) do not comply as to form in all material respects with the applicable accounting requirements of the Securities Exchange Act of 1934 as it applies to Form 10-Q and the related rules and regulations adopted by the SEC. However, it should be noted that the Company has not retrospectively adjusted the unaudited condensed consolidated financial statements included in its Quarterly Report on Form 10-Q for the quarter ended March 28, 2010, which is incorporated by reference in the Registration Statement, to reflect the divestiture of the plastics packaging, Americas, segment as a discontinued operation in accordance with ASC 205, "Presentation of Financial Statements".
- b. (i) At October 24, 2010 there was any change in the capital stock, increase in long-term debt, or decrease in consolidated net current assets (working capital) or stockholders' equity of the Company and subsidiaries consolidated as compared with amounts shown in the September 26, 2010 unaudited condensed consolidated balance sheet incorporated by reference in the Registration Statement, except that the unaudited condensed consolidated balance sheet as of October 24, 2010, which we were furnished by the Company, showed the following changes from September 26, 2010 (in millions of dollars):

	Capital Stock	Net Current Assets
September 26, 2010	\$ 876.5	\$ 422.8
October 24, 2010	\$ 879.9	\$ 369.4

or (ii) for the period from September 27, 2010 to October 24, 2010, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary

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items or of net income attributable to Ball Corporation, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur.

6. As mentioned in 4.b., Company officials have advised us that no consolidated financial data as of any date or for any period subsequent to October 24, 2010 are available; accordingly, the procedures carried out by us with respect to changes in financial statement items after October 24, 2010 have, of necessity, been even more limited than those with respect to the periods referred to in 4. We have inquired of certain officials of the Company who have responsibility for financial and accounting matters as to whether (a) at November 12, 2010 there was any change in the capital stock, increase in long-term debt, or decrease in consolidated net current assets (working capital) or stockholders' equity of the Company and subsidiaries consolidated as compared with amounts shown in the September 26, 2010 unaudited condensed consolidated balance sheet incorporated by reference in the Registration Statement; or (b) for the period from September 27, 2010 to November 12, 2010, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of income before extraordinary items or of net income attributable to Ball Corporation.

Those officials referred to above stated that they cannot comment on any such changes, increases or decreases in consolidated net current assets (working capital), stockholders' equity, consolidated net sales, or the total or per-share amounts of income before extraordinary items or of net income attributable to Ball Corporation for the periods referred to above.

On the basis of these inquiries and our reading of the minutes as described in 4, nothing came to our attention that caused us to believe that there was any such change in capital stock, or increase in long-term debt, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur.

7. For purposes of this letter, we have also read the items identified by you on the attached copy of the preliminary prospectus supplement and incorporated documents forming part of the Registration Statement and have performed the following procedures, which were applied as indicated with respect to the letters explained below. We make no comment as to whether the SEC would view any non-GAAP financial information included or incorporated by reference in the Registration Statement as being compliant with the requirements of Regulation G or Item 10 of Regulation S-K.

- A Compared with a corresponding amount included in the Company's accounting records and found such amounts to be in agreement, given the effect for rounding as applicable
- B Compared to or recomputed from a corresponding amount included in or derived from the Company's audited financial statements as of December 31, 2009 and 2008 and for the three years ended December 31, 2009 incorporated by reference in the Registration Statement and found them to be in agreement, given the effect for rounding as applicable. Working capital is defined as current assets less current liabilities.

It should be noted that the audited financial statements have not been retrospectively adjusted to reflect the divestiture of the plastics packaging, Americas, segment, as a discontinued operation in accordance with ASC 205, "Presentation of Financial Statements"

It should be noted that free cash flow, net debt, EBITDA, EBITDA

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Margin, and As-Adjusted EBITDA are not a measure of operating performance or liquidity determined by generally accepted accounting principles and may not be comparable to similarly titled measures presented by other companies. We make no comment about the Company's definition, calculation or presentation of free cash flow, net debt, EBITDA, EBITDA Margin and As-Adjusted EBITDA or their usefulness for any purpose.

- C Compared to a schedule prepared by the Company from its accounting records and found such amounts to be in agreement. We (a) compared the amounts on the schedule to corresponding amounts appearing in the accounting records and found such amounts to be in agreement and (b) determined that the schedule was mathematically correct. We make no comment as to the reasons presented for increases or decreases in amounts or percentages.

It should be noted that Adjusted EBITDA is not a measure of operating performance or liquidity determined by generally accepted accounting principles and may not be comparable to similarly titled measures presented by other companies. We make no comment about the Company's definition, calculation or presentation of Adjusted EBITDA or its usefulness for any purpose.

When the amount comforted is related to Item 402 executive compensation, we make no comment regarding the completeness or appropriateness of the Company's determination of what constitutes executive compensation for purposes of the SEC disclosure requirements on executive compensation.

- D Compared to or recomputed from a corresponding amount included in or derived from the Company's audited financial statements as of December 31, 2007, 2006, and 2005 and for the two years ended December 31, 2006 included in the 2007 and 2006 Form 10-Ks not incorporated by reference and found them to be in agreement, given the effect for rounding as applicable. Working capital is defined as current assets less current liabilities.

It should be noted that the audited financial statements have not been retrospectively adjusted to reflect the divestiture of the plastics packaging, Americas, segment, as a discontinued operation in accordance with ASC 205, "Presentation of Financial Statements"

It should be noted that free cash flow, net debt, EBITDA, EBITDA Margin, and As-Adjusted EBITDA are not a measure of operating performance or liquidity determined by generally accepted accounting principles and may not be comparable to similarly titled measures presented by other companies. We make no comment about the Company's definition, calculation or presentation of free cash flow, net debt, EBITDA, EBITDA Margin and As-Adjusted EBITDA or their usefulness for any purpose.

- E Recomputed from the actual column for the proposed use of proceeds of the debentures to be offered by means of this Registration Statement as described under "Use of Proceeds" and found such amounts to be in agreement. However, we make no comment as to whether the sale of the debentures will be consummated and the use of proceeds as

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described therein will actually occur.

- F Compared to or recomputed from a corresponding amount included in or derived from the Company's unaudited consolidated financial statements as of and for the three-month periods ended March 28, 2010, as of and for the three- and six-month periods ended June 27, 2010, as of and for the three- and nine-month periods ended September 26, 2010 and as of and for the three- and nine-month periods ended September 27, 2009 incorporated by reference in the Registration Statement and found them to be in agreement, given the effect for rounding as applicable.

It should be noted that the Company has not retrospectively adjusted the unaudited condensed consolidated financial statements for the quarter ended March 28, 2010, to reflect the divestiture of the plastics packaging, Americas, segment as a discontinued operation in accordance with ASC 205, "Presentation of Financial Statements"

It should be noted that free cash flow, EBITDA, and EBITDA Margin are not a measure of operating performance or liquidity defined by generally accepted accounting principles and may not be comparable to similarly titled measures presented by other companies. We make no comment about the company's definition, calculation or presentation of free cash flows, EBITDA and EBITDA Margin or their usefulness for any purpose.



- G Compared to a schedule prepared by the Company from its accounting records which retrospectively gives effect to the divestiture of the plastics packaging, Americas, segment, as a discontinued operation in accordance with ASC 205, "Presentation of Financial Statements", and found such amounts to be in agreement. We (a) compared the amounts in the schedule to corresponding amounts appearing in the accounting records and found such amounts to be in agreement, giving the effect for rounding, as applicable, and (b) determined that the schedule was mathematically correct.

It should be noted that EBITDA and EBITDA Margin are not measures of operating performance or liquidity determined by generally accepted accounting principles and may not be comparable to similarly titled measures presented by other companies. We make no comment about the Company's definition, calculation or presentation of EBITDA and EBITDA or their usefulness for any purpose.

- H Compared to a schedule prepared by the Company from its accounting records and found such amounts to be in agreement and determined that the schedule was mathematically correct. For the ratio of earnings to fixed charges for the 9 months ended September 26, 2010, the Company calculated a portion of the fixed charges by taking the sum of the corresponding fixed charges from 2009 and multiplying it by 75%. We agreed the corresponding fixed charges for 2009 back to the accounting records. We make no comment; however, as to the Company's methodology for estimating the ratio of earnings to fixed charges for the 9 months ended September 26, 2010, and whether such amounts agree to the actual amounts as indicated in the accounting records. It should be noted that the ratio of earnings to fixed charges is not a measure of operating performance or liquidity defined by generally accepted accounting principles and may not be comparable to similarly titled measures presented by other companies. We make no comment

about the Company's definition, calculation or presentation of this ratio or its usefulness for any purposes.

8. Our audit of the consolidated financial statements for the periods referred to in the introductory paragraph of this letter comprised audit tests and procedures deemed necessary for the purpose of expressing an opinion on such financial statements taken as a whole. For none of the periods referred to therein, or any other period, did we perform audit tests for the purpose of expressing an opinion on individual balances of accounts or summaries of selected transactions such as those enumerated above, and, accordingly, we express no opinion thereon.
9. It should be understood that we make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the procedures enumerated in the second preceding paragraph; also, such procedures would not necessarily reveal any material misstatement of the amounts or percentages listed above. Further, we have addressed ourselves solely to the foregoing data as set forth in the Registration Statement and make no representations regarding the adequacy of disclosure or regarding whether any material facts have been omitted.
10. This letter is solely for the information of the addressees and to assist the underwriters in conducting and documenting their investigation of the affairs of the Company in connection with the offering of the securities covered by the Registration Statement, and is not to be used, circulated, quoted, or otherwise referred to within or without the underwriting group for any other purpose, including but not limited to the registration, purchase, or sale of securities, nor is it to be filed with or referred to in whole or in part in the Registration Statement or any other document, except that reference may be made to it in the underwriting agreement or in any list of closing documents pertaining to the offering of the securities covered by the Registration Statement.

**BALL CORPORATION**

And

**GUARANTORS**

Parties Hereto

\$500,000,000

**5.75% SENIOR NOTES DUE 2021****FIFTH SUPPLEMENTAL INDENTURE**

Dated as of November 18, 2010

To

**INDENTURE**

Dated as of March 27, 2006

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**  
**(f/k/a The Bank of New York Trust Company, N.A.)**

Trustee

**CROSS-REFERENCE TABLE\***

Trust Indenture Act Section Indenture Section		Supplemental
310(a)(1)		7.10
	(a)(2)	7.10
	(a)(3)	N.A.
	(a)(4)	N.A.
	(a)(5)	7.10
	(b)	7.10
	(c)	N.A.
311(a)		7.11
	(b)	7.11
	(c)	N.A.
312(a)		2.05
	(b)	12.03
	(c)	12.03
313(a)		7.06
	(b)(2)	7.07
	(c)	7.06; 12.02
	(d)	7.06
314(a)		4.03; 12.02
	(b)	N.A.
	(c)(1)	12.04
	(c)(2)	12.04
	(c)(3)	N.A.
	(e)	12.05
	(f)	N.A.
315(a)		7.01
	(b)	7.05, 12.02
	(c)	7.01
	(d)	7.01
	(e)	6.11
316(a) (last sentence)		2.09
	(a)(1)(A)	6.05
	(a)(1)(B)	6.04
	(a)(2)	N.A.
	(b)	6.07
	(c)	2.12
317(a)(1)		6.08
	(a)(2)	6.09
	(b)	2.04
318(a)		12.01
	(b)	N.A.
	(c)	12.01

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N.A. means not applicable.

\*This Cross-Reference Table is not part of this Supplemental Indenture.

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Exhibit A	FORM OF NOTE
Exhibit B	FORM OF NOTATION OF GUARANTEE
Exhibit C	FORM OF SUPPLEMENTAL INDENTURE TO BE DELIVERED BY SUBSEQUENT GUARANTORS

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FIFTH SUPPLEMENTAL INDENTURE dated as of November 18, 2010 by and among Ball Corporation, an Indiana corporation (the “*Company*”), the Guarantors (as defined below) and The Bank of New York Mellon Trust Company, N.A. (f/k/a The Bank of New York Trust Company, N.A.), a national banking association, as trustee (the “*Trustee*”).

The Company has heretofore executed and delivered to the Trustee an indenture, dated as of March 27, 2006 (the “*Base Indenture*”) providing for the issuance from time to time of one or more series of the Company’s securities.

The Company and the Guarantors desire and have requested the Trustee pursuant to Section 9.1 of the Base Indenture to join with them in the execution and delivery of this Supplemental Indenture in order to supplement the Base Indenture to the extent set forth herein to provide for the issuance and the terms of the Notes (as defined below).

Section 9.1(6) of the Base Indenture provides that the Company and the Trustee, without the consent of any holders of the Company’s Securities, may provide for the issuance of and establish the form and terms and conditions of Notes of any series as permitted by Sections 2.1 and 2.2 thereof. The provisions contained in this Fifth Supplemental Indenture shall govern only the 5.75% Senior Notes due 2021 issued hereunder.

The execution and delivery of this Supplemental Indenture has been duly authorized by a board resolution of the Company and each of the Guarantors.

All conditions and requirements necessary to make this Supplemental Indenture a valid, binding and legal instrument in accordance with its terms have been performed and fulfilled by the Company and the Guarantors and the execution and delivery thereof have been in all respects duly authorized by the Company and the Guarantors.

The Company, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined herein) of the 5.75% Senior Notes due 2021 (the “*Notes*”):

## ARTICLE 1. DEFINITIONS AND INCORPORATION BY REFERENCE

### Section 1.01 Definitions.

“*Acquired Debt*” means, with respect to any specified Person, Indebtedness, including Disqualified Stock, of any other Person existing at the time such other Person is merged with or into, becomes a Restricted Subsidiary of such specified Person or is otherwise assumed by such specified Person in connection with an acquisition of assets from such Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person or the acquisition of assets from such person.

“*Additional Assets*” means:

- (1) any property or assets, other than Capital Stock, Indebtedness or rights to receive payments over a period greater than 180 days, that are usable by the Company or a Restricted Subsidiary in a Permitted Business; or
- (2) the Capital Stock of a Person that is at the time, or becomes, a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or another Restricted Subsidiary.

“*Additional Notes*” means any Notes (other than the Initial Notes) issued under this Supplemental Indenture in accordance with Sections 2.14 and 4.09 hereof, as part of the same series as the Initial Notes.

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“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided*, that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be in control. For purposes of this definition, the terms “controlling,” “controlled by” and “under common control with” have correlative meanings.

“*Agent*” means any Registrar, Paying Agent or co-registrar.

“*Applicable Premium*” means, with respect to any Note on any Redemption Date, the greater of:

- (1) 1.0% of the principal amount of the Note; or
- (2) the excess (if any) of:

(a) the present value at such Redemption Date of (i) the redemption price of such Note at November 15, 2015 (such redemption price being set forth in the table appearing in Section 3.07 hereof) plus (ii) all required interest payments due on such Note through November 15, 2015 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over

(b) the principal amount of the Note.

“*Applicable Procedures*” means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary that apply to such transfer or exchange.

“*Asset Sale*” means:

(1) the sale, lease, conveyance or other disposition of any assets or rights other than in the ordinary course of business consistent with past practices; *provided*, that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by the provisions of this Supplemental Indenture described under Section 4.15 and/or the provisions described under Section 5.01 hereof and not by the provisions of Section 4.10 hereof; and

(2) the issuance or sale of Equity Interests in any of the Company’s Restricted Subsidiaries, and in the case of either clause (1) or (2), whether in a single transaction or series of related transactions (a) that have a fair market value in excess of \$20.0 million or (b) for Net Proceeds in excess of \$20.0 million.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) a transfer of assets or rights by the Company to a Restricted Subsidiary of the Company or by a Restricted Subsidiary of the Company to the Company or another Restricted Subsidiary of the Company;

(2) an issuance or sale of Equity Interests by a Restricted Subsidiary of the Company to the Company or to another Restricted Subsidiary of the Company;

(3) the sale or lease of equipment, inventory, accounts receivable or other current assets in the ordinary course of business;

(4) the sale or other disposition of cash or Cash Equivalents;

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(5) a Restricted Payment that is not prohibited by Section 4.07 or a Permitted Investment;

(6) sales, conveyances or other transfers of receivables and related assets to a Securitization Entity or to another Person as contemplated by the definition of “Qualified Securitization Transaction” in a Qualified Securitization Transaction;

(7) the sale or disposition of obsolete, uneconomical, worn out or surplus property or equipment;

(8) the surrender or waiver of contract rights or settlement, release or surrender of a contract, tort or other litigation claim in the ordinary course of business;

(9) the granting of Liens not prohibited by this Supplemental Indenture;

(10) any exchange of like property pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, for use in a Permitted Business;

(11) the lease, assignment or sublease of any real or personal property in the ordinary course of business; and

(12) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary.

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

“*Ball Asia Pacific*” means Ball Asia Pacific Limited, a Hong Kong company, and its affiliates and joint ventures.

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

“*Base Indenture*” means has the meaning set forth in the preamble to this Supplemental Indenture, as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“*Beneficial Owner*” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” have a corresponding meaning.

“*Board of Directors*” means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

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(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members or managers thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

“*Business Day*” means any day other than a Legal Holiday.

“*Capital Lease Obligation*” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof will 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 prepaid by the lessee without payment of a penalty.

“*Capital Stock*” means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents, however designated, of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“*Cash Equivalents*” means:

(1) United States dollars;

(2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government having maturities of not more than one year from the date of acquisition;

(3) certificates of deposit and eurodollar time deposits with maturities of not more than one year from the date of acquisition, bankers’ acceptances with maturities of not more than one year from the date of acquisition and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of \$500.0 million and a Thomson Bank Watch Rating of “B” or better;

(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper having one of the two highest ratings obtainable from Moody’s or S&P and in each case maturing within six months after the date of acquisition;

(6) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition; and

(7) in the case of any Foreign Subsidiary;

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(a) direct obligations of the sovereign nation, or any agency thereof, in which such Foreign Subsidiary is organized and is conducting business or in obligations fully and unconditionally guaranteed by such sovereign nation, or any agency thereof;

(b) investments of the type and maturity described in clauses (1) through (6) above of foreign obligors, which investments or obligors have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies; or

(c) investments of the type and maturity described in clauses (1) through (6) above of foreign obligors which investments or obligors are not rated as provided in such clauses or in clause (b) above but which are, in the reasonable judgment of the Company, comparable in investment quality to such investments and obligors, or the direct or indirect parent of such obligors.

“*Change of Control*” means the occurrence of any of the following:

(1) the sale, transfer, conveyance or other disposition, other than by way of merger or consolidation, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to any “person,” as that term is used in Section 13(d)(3) of the Exchange Act;

(2) the adoption of a plan relating to the liquidation or dissolution of the Company;

(3) the consummation of any transaction, including, without limitation, any merger or consolidation, the result of which is that any “person,” as defined above, becomes the ultimate Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares;

(4) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors; or

(5) the Company consolidates with, or merges with or into, any Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance).

“Company” means Ball Corporation, and any and all successors thereto.

“Consolidated Cash Flow” means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

- (1) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*
- (2) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued and whether or not capitalized, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and

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charges incurred in respect of letter of credit or bankers’ acceptance financings and receivables financings, and net payments, if any, pursuant to Hedging Obligations, to the extent that any such expense was deducted in computing such Consolidated Net Income; *plus*

- (3) depreciation, amortization, including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period, and other non-cash expenses, excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period, of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *minus*

- (4) non-cash items increasing such Consolidated Net Income for such period, other than items that were accrued in the ordinary course of business;

in each case, on a consolidated basis and determined in accordance with GAAP.

“Consolidated Indebtedness” means, with respect to any specified Person as of any date, the sum, without duplication, of:

- (1) the total amount of Indebtedness of such Person and its Restricted Subsidiaries; *plus*
- (2) the total amount of Indebtedness of any other Person, to the extent that such Indebtedness has been Guaranteed by, or is secured by a Lien on the assets of, the referent Person or one or more of its Restricted Subsidiaries; *plus*
- (3) the aggregate liquidation value of all Disqualified Stock of such Person and all preferred stock of Restricted Subsidiaries of such Person,

in each case, determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided*, that the following items shall be excluded in computing Consolidated Net Income (without duplication):

- (1) the Net Income (but not loss) of any Person (other than the Company) that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting except to the extent of the amount of dividends or distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;
- (2) the Net Income of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval, that has not been obtained or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders;
- (3) the Net Income of any Person acquired in a pooling of interests transaction for any period prior to the date of such acquisition;
- (4) the cumulative effect of a change in accounting principles;
- (5) any gains or losses (on an after-tax basis) attributable to asset dispositions;
- (6) all extraordinary, unusual, or non-recurring gains, charges, expenses or losses;

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- (7) any non-cash compensation expenses recorded from grants of stock options, restricted stock and other equity equivalents to officers, directors and employees;

- (8) any impairment charge or asset write off;

- (9) net charges associated with or related to any restructurings;

(10) all financial advisory fees, accounting fees, legal fees and similar advisory and consulting fees and related costs and expenses of the Company and its Restricted Subsidiaries incurred as a result of asset acquisitions, Investments, Asset Sales permitted under Section 4.10 hereof and the issuance of Capital Stock or Indebtedness, all determined in accordance with GAAP and in each case eliminating any increase or decrease in income resulting from non-cash accounting adjustments made in connection with the related asset acquisition, Investment or Asset Sale;

- (11) expenses incurred by the Company or any Restricted Subsidiary to the extent reimbursed in cash by a third party;

(12) all other non-cash charges, including unrealized gains or losses on agreements with respect to Hedging Obligations and all non-cash charges associated with announced restructurings, whether announced previously or in the future (such non-cash restructuring charges being “Non-Cash Restructuring Charges”); and

(13) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued).

“*Continuing Directors*” means, as of any date of determination, any member of the Board of Directors of the Company who:

- (1) was a member of such Board of Directors on the date of this Supplemental Indenture; or
- (2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election.

“*Corporate Trust Office of the Trustee*” will be at the address of the Trustee specified in Section 12.02 hereof or such other address as to which the Trustee may give notice to the Company.

“*Credit Facilities*” means one or more debt facilities (including, without limitation, the Existing Credit Facilities) or commercial paper facilities, in each case with banks, investment funds or other institutional lenders providing for revolving credit loans, term loans, receivables financings, including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced in any manner (whether upon or after termination or otherwise) or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time.

“*Custodian*” means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

“*Default*” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“*Definitive Note*” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A hereto except that such Note will not bear the Global Note Legend.

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“*Depository*” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as depository hereunder and having become such pursuant to the applicable provision of this Supplemental Indenture.

“*Description of Notes*” means the description of notes section of the Company’s prospectus supplement, dated November 15, 2010, relating to the initial offering of the Notes.

“*Designated Noncash Consideration*” means the fair market value of noncash consideration received by the Company or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Noncash Consideration pursuant to an Officers’ Certificate, setting forth the basis of such valuation, executed by the principal executive officer and the principal financial officer of the Company, less the amount of cash or Cash Equivalents received in connection with a sale of such Designated Noncash Consideration.

“*Disqualified Stock*” means any Capital Stock that, by its terms, or by the terms of any security into which it is convertible or for which it is exchangeable, in each case at the option of the holder of the security, or upon the happening of any event, matures, excluding any maturity as the result of the optional redemption thereof, or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder, in whole or in part, on or prior to the date on which the Notes mature, except to the extent that such Capital Stock is solely redeemable with, or solely exchangeable for, any Equity Interests of the Company that are not Disqualified Stock; *provided, however*, that only the portion of the Capital Stock or other security which so matures, is mandatorily redeemable or is so redeemable at the option of the holder prior to such date will be deemed to be Disqualified Stock; *provided further* that if such Capital Stock or other security is issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Capital Stock or other security will not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Company may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.07 hereof.

“*Domestic Subsidiary*” means any Restricted Subsidiary of the Company that was formed under the laws of the United States or any state of the United States or the District of Columbia or that guarantees or otherwise provides direct credit support for any Indebtedness of the Company or its Domestic Subsidiaries.

“*Equity Interests*” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“*Equity Offering*” means:

- (1) an offering or sale of Capital Stock, other than Disqualified Stock, of the Company; or
- (2) the contribution of cash to the Company as an equity capital contribution, other than in respect of Disqualified Stock.

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

“*Excluded Subsidiary*” means such Subsidiaries of the Company as may from time to time be designated by the Company as “Excluded Subsidiaries” pursuant to an Officers’ Certificate delivered to the Trustee; *provided*, that each such Subsidiary will be an Excluded Subsidiary only if and only for so long as:

- (1) the aggregate of the net sales of all such Subsidiaries will not exceed \$10.0 million in any twelve-month period; and
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- (2) the aggregate of the assets, including capitalization, of all such Subsidiaries as of any date will not exceed \$10.0 million.

“Existing Credit Facilities” means that certain credit agreement, dated October 13, 2005, as amended.

“Existing Indebtedness” means all Indebtedness of the Company and the Company’s Restricted Subsidiaries, other than Indebtedness under Credit Facilities, in existence on the date of this Supplemental Indenture.

“Existing Senior Notes” means up to \$375.0 million of the Company’s 7.125% Senior Notes due 2016, up to \$450.0 million of the Company’s 6.625% Senior Notes due 2018, up to \$325.0 million of the Company’s 7.375% Senior Notes due 2019 and up to \$500 million of the Company’s 6.75% Senior Notes due 2020.

“Fitch” means Fitch Inc., and its successors.

“Fixed Charge Coverage Ratio” means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person and its Restricted Subsidiaries for such period to the Fixed Charges of such Person and its Restricted Subsidiaries for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “Calculation Date”), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

- (1) acquisitions and dispositions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and giving effect to the application of proceeds from any dispositions, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be deemed to have occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period will be calculated without giving effect to clause (3) of the proviso set forth in the definition of Consolidated Net Income;
- (2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, will be excluded; and
- (3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

provided that to the extent that clause (1), (2) or (3) of this paragraph requires that pro forma effect be given to an acquisition, disposition or discontinued operations, as applicable, such pro forma calculation shall be made in good faith by a responsible financial or accounting officer of the Company (any may include, for the avoidance of doubt and without duplication, cost savings, synergies and operating expense resulting from such acquisition whether or not such cost savings, synergies or operating expense reductions would be allowed under Regulation S-X promulgated by the SEC or any other regulation or policy of the SEC).

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“Fixed Charges” means, with respect to any specified Person for any period, the sum, without duplication, of:

- (1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, to the extent properly characterized as interest expense in accordance with GAAP, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings, and net payments, if any, pursuant to Hedging Obligations;
- (2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period;
- (3) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; and
- (4) all dividend payments, whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of the Company, other than Disqualified Stock, or to the Company or a Restricted Subsidiary of the Company.

“Foreign Subsidiaries” means Subsidiaries of the Company that are not Domestic Subsidiaries.

“GAAP” means generally accepted accounting principles 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 and such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are applicable as of the date of this Supplemental Indenture.

“Global Note Legend” means the legend set forth in Section 2.06(f), which is required to be placed on all Global Notes issued under this Supplemental Indenture.

“Global Notes” means, individually and collectively, each of the Global Notes, in the form of Exhibit A hereto issued in accordance with Section 2.01 hereof.

“Government Securities” means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

“Guarantee” means a guarantee, other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness.

“Guarantors” means:

- (1) each Domestic Subsidiary of the Company as of the date of this Supplemental Indenture that Guarantees any other Indebtedness of the Company (other than Ball Capital Corp. II, Ball Asia Pacific, any other Unrestricted Subsidiary and the Excluded Subsidiaries); and



(2) any other Subsidiary of the Company that executes a supplemental indenture in the form of Exhibit C and becomes a Guarantor in accordance with the provisions of this Supplemental Indenture;

and, in each case, their respective successors and assigns.

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“*Hedging Counterparty*” means, with respect to any Hedging Obligations, any counterparty thereto, at the time such Hedging Obligations are initially incurred, that is a holder, or an Affiliate thereof, of Indebtedness under any Credit Facilities. For clarification, such counterparty (and its successors and assigns) will be deemed a Hedging Counterparty even if it or its Affiliate ceases to be a holder of Indebtedness under any Credit Facilities for any reason.

“*Hedging Obligations*” means, with respect to any specified Person, the net payment Obligations of such Person under:

- (1) interest rate swap agreements (including from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements; and
- (2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

“*Holder*” means a Person in whose name a Note is registered.

“*Incur*” means, to directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise. The term “*Incurrence*” has a correlative meaning. For the avoidance of doubt the Incurrence of Indebtedness by a Subsidiary of a Person will not be deemed to be an indirect Incurrence of Indebtedness by the referent Person.

“*Indebtedness*” means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit, or reimbursement agreements in respect thereof;
- (3) in respect of banker’s acceptances;
- (4) representing Capital Lease Obligations;
- (5) representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable; or
- (6) representing Hedging Obligations not entered into on behalf of a customer,

if and to the extent any of the preceding items, other than letters of credit and Hedging Obligations, would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term “*Indebtedness*” includes all Indebtedness of others secured by a Lien on any asset of the specified Person, whether or not such Indebtedness is assumed by the specified Person, and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person or any liability of any person, whether or not contingent and whether or not it appears on the balance sheet of such Person.

The amount of any Indebtedness outstanding as of any date will be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness that does not require the current payment of interest;
  - (2) the principal amount of the Indebtedness in the case of any other Indebtedness; and
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- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:
  - (a) the fair market value of such assets at the date of determination; and
  - (b) the amount of the Indebtedness of the other Person.

“*Indenture*” means the Base Indenture, as supplemented by this Supplemental Indenture, governing the Notes, in each case, as amended, supplemented or restated from time to time.

“*Indirect Participant*” means a Person who holds a beneficial interest in a Global Note through a Participant.

“*Initial Notes*” means the first \$500.0 million aggregate principal amount of Notes issued under this Supplemental Indenture on the date hereof.

“*Investments*” means, with respect to any Person, all investments by such Person in other Persons, including Affiliates, in the form of loans, including Guarantees of Indebtedness or other Obligations, advances or capital contributions, excluding commission, travel, entertainment, moving and similar advances to officers and employees made in the ordinary course of business, prepaid expenses and accounts receivable, purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a direct or indirect Restricted Subsidiary of the Company, the Company or such Restricted Subsidiary, as the case may be, will be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Equity Interests of such Restricted Subsidiary that were not sold or disposed of in an amount determined as provided in the final paragraph of Section 4.07 hereof.

“*Investment Grade*” means a rating equal to or higher than BBB- (or the equivalent) by Fitch, Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, and the equivalent investment grade credit rating from any Replacement Rating Agency or Replacement Rating Agencies, if any.

“*Legal Holiday*” means a Saturday, a Sunday or a day on which banking institutions in the City of New York, the city in which the principal office of the Trustee is located or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest will accrue on such payment for the intervening period.

“*Leverage Ratio*” means, with respect to any specified Person as of any date, the ratio of (a) the Consolidated Indebtedness of the Company as of such date to (b) the Consolidated Cash Flow of the Company for the four most recent full fiscal quarters ending immediately prior to such date for which internal financial statements are available. For purposes of calculating the Leverage Ratio, Consolidated Cash Flow will be calculated on a pro forma basis as provided in the definition of “Fixed Charge Coverage Ratio.”

“*Lien*” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement or any lease in the nature thereof; *provided* that in no event will an operating lease be deemed to constitute a Lien.

“*Limited Originator Recourse*” means a reimbursement obligation to the Company or a Restricted Subsidiary in connection with a drawing on a letter of credit, revolving loan commitment, cash collateral account or other such credit enhancement issued to support Indebtedness of a Securitization Entity under a facility for the financing of trade receivables; *provided*, that the available amount of any such form of credit enhancement at any time will not exceed 10% of the principal amount of such Indebtedness at such time.

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“*Moody’s*” means Moody’s Investors Service, Inc., and its successors.

“*Net Income*” means, with respect to any specified Person, the net income or loss of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

- (1) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries;
- (2) any extraordinary gain or loss, together with any related provision for taxes on such extraordinary gain or loss; and
- (3) any one-time noncash charges (including legal, accounting, debt issuance and debt retirement costs) resulting from the Transactions.

“*Net Proceeds*” means the aggregate cash proceeds or Cash Equivalents received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale, including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale, net of all costs relating to such Asset Sale, including, without limitation, legal, accounting, investment banking and brokers fees, and sales and underwriting commissions, and any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), and amounts required to be applied to the repayment of Indebtedness, other than Indebtedness under a Credit Facility secured by a Lien on the asset or assets that were the subject of such Asset Sale and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

“*Non-Recourse Debt*” means Indebtedness:

- (1) as to which neither the Company nor any of its Restricted Subsidiaries, other than a Securitization Entity, if applicable, (a) provides credit support of any kind, including any undertaking, agreement or instrument that would constitute Indebtedness, (b) is directly or indirectly liable as a guarantor or otherwise or (c) constitutes the lender;
- (2) no default with respect to which, including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary, would permit upon notice, lapse of time or both any holder of any other Indebtedness, other than the Notes, of the Company or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its stated maturity; and
- (3) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Company or any of its Restricted Subsidiaries, other than a Securitization Entity, if applicable.

“*Non-U.S. Person*” means a Person who is not a U.S. Person.

“*Notes*” has the meaning assigned to it in the preamble to this Supplemental Indenture. The Initial Notes and the Additional Notes will be treated as a single class for all purposes under this Supplemental Indenture, and unless the context otherwise requires, all references to the Notes will include the Initial Notes and any Additional Notes.

“*Obligations*” means any principal, premium, if any, interest, including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company or its Restricted Subsidiaries whether or not a claim for post-filing interest is allowed in such proceeding, penalties, fees, charges, expenses, indemnifications, reimbursement obligations, damages, including liquidated damages, guarantees and other liabilities or amounts payable under the documentation governing any Indebtedness or in respect thereof.

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“*Officer*” means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

“*Officers’ Certificate*” means a certificate signed on behalf of the Company by two Officers of the Company, one of whom must be a vice-president, the principal financial officer or the principal accounting officer of the Company, that meets the requirements of Sections 12.04 and 12.05 hereof.

“*Opinion of Counsel*” means an opinion from legal counsel who is acceptable to the Trustee, that meets the requirements of Sections 12.04 and 12.05 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

“*Participant*” means, with respect to the Depositary, a Person who has an account with the Depositary.

“*Permitted Business*” means the lines of business conducted by the Company and its Restricted Subsidiaries on the date of this Supplemental Indenture and businesses substantially similar, related or incidental thereto or reasonable extensions thereof.

“*Permitted Investments*” means:

- (1) any Investment in the Company or in a Restricted Subsidiary of the Company;
- (2) any Investment in Cash Equivalents;
- (3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person engaged in a Permitted Business, if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary of the Company; 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 into, the Company or a Restricted Subsidiary of the Company;
- (4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.10 hereof (including, without limitation, any sale or other disposition of all or a portion of the business constituting the aerospace and technologies segment of the Company) or any other disposition of assets not constituting an Asset Sale;
- (5) any Investment made in exchange for the issuance of Equity Interests, other than Disqualified Stock, of the Company;
- (6) other Investments in any Person having an aggregate fair market value, measured on the date each such Investment was made and without giving effect to subsequent changes in value, when taken together with all other Investments made pursuant to this clause (6) since the date of this Supplemental Indenture not to exceed 2.5% of Total Assets;
- (7) Hedging Obligations;
- (8) any Investment by the Company or a Restricted Subsidiary of the Company in a Securitization Entity or any Investment by a Securitization Entity in any other Person in connection with a Qualified Securitization Transaction; *provided*, that any Investment in a Securitization Entity is in the form of a Purchase Money Note or an Equity Interest;

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- (9) any Investment existing on the date of this Supplemental Indenture and any amendment, modification, restatement, supplement, extension, renewal, refunding, replacement, or refinancing, in whole or in part, thereof;
  - (10) any Investments received in satisfaction of judgments, settlements of debt or compromises of obligations incurred in the ordinary course of business, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;
  - (11) any Investment in Ball Asia Pacific, the proceeds of which are used to permanently repay Indebtedness of Ball Asia Pacific in an amount up to the amount that was outstanding on August 10, 1998, plus any interest, prepayment penalty and reasonable costs associated with such repayment;
  - (12) Investments in Permitted Joint Ventures of up to \$250.0 million outstanding at any time;
  - (13) receivables owing to the Company or any Restricted Subsidiary of the Company if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided* that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;
  - (14) Investments deemed to have been made as a result of the acquisition of a Person that at the time of such acquisition held instruments constituting Investments that were not acquired in contemplation of the acquisition of such Person;
  - (15) Investments in prepaid expenses and lease, utility and workers’ compensation performance and other similar deposits;
  - (16) commission, payroll, travel and similar advances to employees in the ordinary course of business;
  - (17) Investments consisting of intercompany indebtedness not prohibited under this Supplemental Indenture;
  - (18) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;
  - (19) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of intellectual property, in each case in the ordinary course of business; and
  - (20) other Investments in any Person other than an Affiliate of the Company having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (20) that are at the time outstanding not to exceed \$350.0 million.

“*Permitted Joint Venture*” means an entity characterized as a joint venture, however structured, engaged in a Permitted Business and in which the Company or a Restricted Subsidiary (a) owns at least 40% of the ownership interest or (b) has a right to receive at least 40% of the profits or distributions; *provided* that such joint venture is not a Subsidiary of the Company.

“*Permitted Liens*” means:

- (1) Liens on assets, including, without limitation, the capital stock of a Subsidiary, of the Company or any of its Restricted Subsidiaries to secure Indebtedness under any Credit Facilities that is permitted by the terms of this Supplemental Indenture to be incurred, whether pursuant to the terms of the first or second paragraph of Section 4.09 hereof or otherwise;

- (2) Liens on the assets, including, but not limited to, the capital stock of a Subsidiary, of the Company or any of its Restricted Subsidiaries to secure Indebtedness in respect of any Hedging Obligations to any Hedging Counterparty, but only to the extent that such Hedging Obligations relate to Indebtedness that is permitted by the terms of this Supplemental Indenture to be incurred;
- (3) Liens on property or assets of a Person existing at the time such Person is acquired by, or merged into or consolidated with, the Company or any Restricted Subsidiary of the Company; *provided*, that such Liens were not put in place in contemplation thereof and do not extend to any property or assets other than those of the Person acquired by, or merged into or consolidated with, the Company or any Restricted Subsidiary of the Company;
- (4) Liens on property or assets existing at the time of acquisition thereof by the Company or any Restricted Subsidiary of the Company, *provided*, that such Liens were not put in place in contemplation thereof and only extend to the property or assets so acquired;
- (5) Liens existing on the date of this Supplemental Indenture;
- (6) Liens to secure any Permitted Refinancing Indebtedness incurred to refinance any Indebtedness secured by any Lien referred to in the foregoing clauses (1) through (5), as the case may be, at the time the original Lien became a Permitted Lien;
- (7) Liens in favor of the Company or any Restricted Subsidiary of the Company;
- (8) Liens to secure Indebtedness permitted by clause (xvi) of the definition of “Permitted Debt;”
- (9) Liens incurred in the ordinary course of business of the Company or any Restricted Subsidiary of the Company with respect to obligations that do not exceed \$100.0 million in the aggregate at any one time outstanding and that (a) are not incurred in connection with the borrowing of money or the obtaining of advances or credit, other than trade credit in the ordinary course of business, and (b) do not in the aggregate materially detract from the value of the property or materially impair the use thereof in the operation of business by the Company or such Restricted Subsidiary;
- (10) Liens incurred or deposits made to secure the performance of statutory or regulatory obligations, bankers’ acceptances, surety or appeal bonds, performance bonds, deposits to secure the performance of tenders, bids, trade contracts, government contracts, import duties, payment of rent, performance, letters of credit and return-of-money bonds, leases or licenses or other obligations of a like nature incurred in the ordinary course of business, including, without limitation, landlord Liens on leased properties;
- (11) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent, that are not subject to penalties or interest for non-payment or that are being contested in good faith by appropriate proceedings; *provided*, that any reserve or other appropriate provision as will be required to conform with GAAP will have been made therefor;
- (12) Liens to secure Indebtedness, including Capital Lease Obligations, permitted by clause (iv) of the definition of “Permitted Debt;”
- (13) carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s, suppliers’ or other like Liens arising in the ordinary course of business and deposits made to obtain the release of such liens and with respect of obligations not overdue for a period in excess of 60 days or which are being contested in good faith by appropriate proceedings; *provided*, that any reserve or other appropriate provision as will be required to conform with GAAP will have been made therefor;
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- (14) easements, rights-of-way, zoning ordinances and similar charges, restrictions, exceptions or other irregularities, reservations of, or rights of others for: licenses, sewers, electric lines, telegraph and telephone lines, and other similar encumbrances or title defects incurred, or leases or subleases granted to others, in the ordinary course of business, which do not in any case materially detract from the value of the property subject thereto or do not materially interfere with the ordinary conduct of the business of the Company and its Restricted Subsidiaries taken as a whole;
- (15) Liens in favor of customs and revenue authorities to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and other similar Liens arising in the ordinary course of business;
- (16) leases or subleases granted to third Persons not materially interfering with the ordinary course of business of the Company and its Restricted Subsidiaries taken as a whole;
- (17) Liens, other than any Lien imposed by ERISA or any rule or regulation promulgated thereunder, incurred or pledges or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security;
- (18) deposits made in the ordinary course of business to secure liability to insurance carriers;
- (19) Liens for purchase money obligations, including refinancings thereof permitted under Section 4.09 hereof, *provided*, that (a) the Indebtedness secured by any such Lien is permitted under Section 4.09 hereof and (b) any such Lien encumbers only the asset so purchased;
- (20) any attachment or judgment Lien not constituting an Event of Default under clause (i) of Section 6.01 hereof and Liens arising from the rendering of a judgment that is not a final judgment or order against the Company or any Restricted Subsidiary with respect to which the Company or such Restricted Subsidiary is then proceeding with an appeal or other proceeding for review or in connection with surety or appeal bonds in connection with such attachment or judgment;
- (21) any interest or title of a lessor or sublessor under any operating lease or capital lease;
- (22) Liens on assets transferred to a Securitization Entity or on assets of a Securitization Entity, in either case incurred in connection with a Qualified Securitization Transaction;
- (23) Liens under licensing agreements for use of intellectual property entered into in the ordinary course of business;
- (24) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business; and

“*Permitted Refinancing Indebtedness*” means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness of the Company or any of its Restricted Subsidiaries, other than intercompany Indebtedness; *provided*, that:

(1) the principal amount, or accreted value, if applicable, of such Permitted Refinancing Indebtedness does not exceed the principal amount, or accreted value, if applicable, of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded, plus all accrued interest and premiums on the Indebtedness and the amount of all fees, expenses, prepayment penalties and premiums incurred in connection therewith;

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the Notes on terms at least as favorable to the holders of Notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(4) such Indebtedness is incurred either by the Company or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

“*Person*” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or any agency or political subdivision thereof or any other entity.

“*Purchase Money Note*” means a promissory note of a Securitization Entity evidencing a line of credit, which may be irrevocable, from the Company or any Restricted Subsidiary of the Company in connection with a Qualified Securitization Transaction, which note will be repaid from cash available to the Securitization Entity, 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.

“*Qualified Securitization Transaction*” means any transaction or series of transactions pursuant to which the Company or any of its Restricted Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Entity, in the case of a transfer by the Company or any of its Restricted Subsidiaries, and (b) any other Person, in case of a transfer by a Securitization Entity, or may grant a security interest in, any receivables, whether now existing or arising or acquired in the future, of the Company or any of its Restricted Subsidiaries, and any assets related thereto including, without limitation, all collateral securing such receivables, all contracts and contract rights and all Guarantees or other obligations in respect of such receivables, proceeds of such receivables and other assets, including contract rights, which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving receivables, collectively, “*transferred assets*”; *provided*, that, in the case of any such transfer by the Company or any of its Restricted Subsidiaries, the transferor receives cash or Purchase Money Notes in an amount which, when aggregated with the cash and Purchase Money Notes received by the Company and its Restricted Subsidiaries upon all other such transfers of transferred assets during the 90 days preceding such transfer, is at least equal to 75% of the aggregate face amount of all receivables so transferred during such day and the 90 preceding days.

“*Rating Agencies*” means each of Fitch, Moody’s and S&P and any Replacement Agency selected by the Company (as certified by a resolution by the Board of Directors) if any of Fitch, Moody’s or S&P ceases to rate the notes or fails to make a rating of the notes publicly available for reasons outside the control of the Company.

“*Redemption Date*” has the meaning set forth in Section 3.07(a).

“*Replacement Rating Agency*” means a “nationally recognized statistical rating organization” within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company (as certified by a resolution by the Board of Directors) as a replacement agency for Fitch, Moody’s or S&P, or all of them, as the case may be, if any of Fitch, Moody’s or S&P ceases to rate the notes or fails to make a rating of the notes publicly available for reasons outside the control of the Company.

“*Responsible Officer*” when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those

performed by the persons who at the time will be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who will have direct responsibility for the administration of this Supplemental Indenture.

“*Restricted Investment*” means an Investment other than a Permitted Investment.

“*Restricted Subsidiary*” of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary; *provided*, that, on the date of this Supplemental Indenture, all Subsidiaries of the Company other than Ball Asia Pacific, Ball Capital Corp. II and the Excluded Subsidiaries will be Restricted Subsidiaries of the Company.

“*S&P*” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Corporation, Inc., and its successors.

“*SEC*” means the Securities and Exchange Commission.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Securitization Entity*” means a Wholly-Owned Restricted Subsidiary of the Company, or another Person in which the Company or any Restricted Subsidiary of the Company makes an Investment and to which the Company or any Restricted Subsidiary of the Company transfers receivables and related assets, that engages in no activities other than in connection with the financing of receivables and that is designated by the Board of the Directors of the Company, as provided below, as a Securitization Entity (a) no portion of the Indebtedness or any other Obligations, contingent or otherwise, of which (1) is guaranteed by the Company or any Restricted Subsidiary of the Company, other than the Securitization Entity, other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse, (2) is recourse to or obligates the Company or any Restricted Subsidiary of the Company, other than the Securitization Entity, in any way other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse or (3) subjects any property or asset of the Company or any Restricted Subsidiary of the Company, other than the Securitization Entity, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings or Limited Originator Recourse, (b) with which neither the

Company nor any Restricted Subsidiary of the Company has any material contract, agreement, arrangement or understanding other than 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, other than fees payable in the ordinary course of business in connection with servicing receivables of such entity and (c) to which neither the Company nor any Restricted Subsidiary of the Company has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Company will be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of the Board of Directors of the Company giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing conditions.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date of this Supplemental Indenture.

"*Standard Securitization Undertakings*" means representations, warranties, covenants and indemnities entered into by the Company or any Subsidiary of the Company that are reasonably customary in receivables securitization transactions.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means, with respect to any specified Person:

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(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled, without regard to the occurrence of any contingency, to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person; and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or an entity described in clause (1) and related to such Person or (b) the only general partners of which are such Person or one or more entities described in clause (1) and related to such Person, or any combination thereof.

"*Supplemental Indenture*" means this Fifth Supplemental Indenture, dated as of the date hereof, by and among the Company, the Guarantors and the Trustee, governing the Notes, as amended, supplemented or otherwise modified from time to time in accordance with the Base Indenture and the terms hereof.

"*TIA*" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbb) as in effect on the date on which this Supplemental Indenture is qualified under the TIA.

"*Total Assets*" means the total assets of the Company and its Restricted Subsidiaries on a consolidated basis determined in accordance with GAAP, as shown on the most recently available consolidated balance sheet of the Company and its Restricted Subsidiaries.

"*Transactions*" means the offering of the Notes under this Supplemental Indenture and the application of the net proceeds therefrom and the payment of related fees and expenses.

"*Treasury Rate*" means, as of 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 the 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 the Redemption Date to November 15, 2015; *provided, however*, that if the period from the Redemption Date to November 15, 2015, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Unrestricted Subsidiary*" means (a) each of Ball Asia Pacific, Ball Capital Corp. II, and the Excluded Subsidiaries and (b) any Subsidiary of the Company that is designated by the Board of Directors of the Company as an Unrestricted Subsidiary pursuant to a board resolution, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) except as permitted by Section 4.11, is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;

(3) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's net worth; and

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries; *provided, however*, that the Company and its Restricted Subsidiaries may guarantee the performance of Unrestricted Subsidiaries in the ordinary course of business except for guarantees of Obligations in respect of borrowed money.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee a certified copy of the board resolution giving effect to such designation and an

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Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07 hereof. If, at any time, any such Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Supplemental Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Company as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09 hereof, the Company will be in default of such Section 4.09. The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under Section 4.09 hereof, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

“U.S. Person” means a U.S. person as defined in Rule 902(o) under the Securities Act.

“Voting Stock” of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years, calculated to the nearest one-twelfth, that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

“Wholly-owned Restricted Subsidiary” of any specified Person means a Restricted Subsidiary, 100% of the outstanding Capital Stock and other Equity Interests of which are directly or indirectly owned by the Company.

#### **Section 1.02** Other Definitions.

Term	Defined in Section
“Affiliate Transaction”	4.11
“Asset Sale Offer”	4.10
“Authentication Order”	2.02
“Calculation Date”	1.01
“Change of Control Offer”	4.15
“Change of Control Payment	4.15
“Change of Control Payment Date”	4.15
“Covenant Defeasance”	8.03
“DTC”	2.03
“Event of Default”	6.01
“Excess Proceeds”	4.10
“Legal Defeasance”	8.02
“Offer Amount”	3.09
“Offer Period”	3.09
“Other Indebtedness”	4.16
“Paying Agent”	2.03
“Payment Default”	6.01
“Permitted Debt”	4.09
“Purchase Date”	3.09

“Registrar”	2.03
“Restricted Payments”	4.07

#### **Section 1.03** Incorporation by Reference of Trust Indenture Act.

Whenever this Supplemental Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Supplemental Indenture.

The following TIA terms used in this Supplemental Indenture have the following meanings:

“indenture securities” means the Notes;

“indenture security holder” means a Holder of a Note;

“indenture to be qualified” means this Supplemental Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and

“obligor” on the Notes and the Guarantees means the Company and the Guarantors, respectively, and any successor obligor upon the Notes and the Guarantees, respectively.

All other terms used in this Supplemental Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

#### **Section 1.04** Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined herein has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) provisions apply to successive events and transactions;

(6) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(7) “will” shall be interpreted to express a command; and

(8) references to sections of the Indenture refer to sections of this Supplemental Indenture.

**Section 1.05** *Relationship with Base Indenture.*

The terms and provisions contained in the Base Indenture will constitute, and are hereby expressly made, a part of this Supplemental Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of the Base Indenture conflicts with the express provisions of this Supplemental Indenture, the provisions of this Supplemental Indenture will govern and be controlling.

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The Trustee accepts the amendment of the Base Indenture effected by this Supplemental Indenture and agrees to execute the trust created by the Base Indenture as hereby amended, but only upon the terms and conditions set forth in this Supplemental Indenture, including the terms and provisions defining and limiting the liabilities and responsibilities of the Trustee in the performance of the trust created by the Base Indenture, and without limiting the generality of the foregoing, the Trustee will not be responsible in any manner whatsoever for or with respect to any of the recitals or statements contained herein, all of which recitals or statements are made solely by the Company and the Guarantors, or for or with respect to (1) the validity or sufficiency of this Supplemental Indenture or any of the terms or provisions hereof, (2) the proper authorization hereof by the Company and the Guarantors, (3) the due execution hereof by the Company and the Guarantors or (4) the consequences (direct or indirect and whether deliberate or inadvertent) of any amendment herein provided for, and the Trustee makes no representation with respect to any such matters.

**ARTICLE 2.**  
**THE NOTES**

**Section 2.01** *Form and Dating.*

(a) *General.* The Notes and the Trustee’s certificate of authentication will be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note will be dated the date of its authentication. The Notes will be in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of this Supplemental Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of the Base Indenture, the provisions of the Note will govern and be controlling, and to the extent any provision of the Note conflicts with the express provisions of this Supplemental Indenture, the provisions of this Supplemental Indenture will govern and be controlling.

(b) *Global Notes.* Notes issued in global form will be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon). Notes issued in definitive form will be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon). Each Global Note will represent such of the outstanding Notes as will be specified therein and each will provide that it will represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

**Section 2.02** *Execution and Authentication.*

One Officer will sign the Notes for the Company and the Guarantees for the Guarantors by manual or facsimile signature or a signature by the means of an electronic transmission (including a pdf). If an Officer whose signature is on a Note and/or a Guarantee no longer holds that office at the time such Note and/or Guarantee is authenticated, such Note and/or Guarantee will nevertheless be valid.

A Note and/or a Guarantee will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note or Guarantee, as applicable, has been authenticated under this Supplemental Indenture.

The Trustee will, upon a written order of the Company signed by one Officer (an “*Authentication Order*”), authenticate Notes and Guarantees for original issue in accordance with this Supplemental Indenture, including any Additional Notes issued pursuant to Section 2.14 hereof.

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The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes and Guarantees whenever the Trustee may do so. Each reference in this Supplemental Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders, the Company or an Affiliate of the Company.

**Section 2.03** *Registrar and Paying Agent.*

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange (“*Registrar*”) and an office or agency where Notes may be presented for payment (“*Paying Agent*”). The Registrar will keep a register of the Notes and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term “*Registrar*” includes any co-registrar and the term “*Paying Agent*” includes any additional paying agent. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company will notify the Trustee in writing of the name and address of any Agent not a party to this Supplemental Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee will act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints The Depository Trust Company (“*DTC*”) to act as Depository with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.



**Section 2.04** *Paying Agent to Hold Money in Trust.*

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) will have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee will serve as Paying Agent for the Notes.

**Section 2.05** *Holder Lists.*

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and will otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar, the Company will furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Company will otherwise comply with TIA Section 312(a).

**Section 2.06** *Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes.* A Global Note may not be transferred as a whole except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes will be exchanged by the Company for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the

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Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 120 days after the date of such notice from the Depositary; or

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee.

Upon the occurrence of either of the preceding events in (1) or (2) above, Definitive Notes will be issued in such names and in any approved denominations as the Depositary will instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, will be authenticated and delivered in the form of, and will be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Sections 2.06(b), (c) or (g) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Supplemental Indenture and the Applicable Procedures. Transfers of beneficial interests in the Global Notes also will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in any Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in a Global Note. No written orders or instructions will be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) (i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and (ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase.

Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Supplemental Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee will adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(g) hereof.

(c) *Transfer or Exchange of Beneficial Interests for Definitive Notes.* If any holder of a beneficial interest in a Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company will execute and the Trustee will authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Definitive Notes to the Persons in whose names such Notes are so registered.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests.* A Holder of a Definitive Note may exchange such Note for a beneficial interest in a Global Note or transfer such Definitive Notes to a Person who

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takes delivery thereof in the form of a beneficial interest in a Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee will cancel the applicable Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to the previous paragraph at a time when a Global Note has not yet been issued, the Company will issue and, upon receipt of the Company's order, the Trustee will authenticate one or more Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

A Holder of Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of a Definitive Note.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder will present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by his attorney, duly authorized in writing. In addition, the requesting Holder will provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e).

(f) Legends. The following legends will appear on the face of all Global Notes issued under this Supplemental Indenture unless specifically stated otherwise in the applicable provisions of this Supplemental Indenture.

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE FIFTH SUPPLEMENTAL INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE FIFTH SUPPLEMENTAL INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE FIFTH SUPPLEMENTAL INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE SUPPLEMENTAL INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(g) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled

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by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) General Provisions Relating to Transfers and Exchanges.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon the Company's order or at the Registrar's request.

(2) No service charge will be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 3.09, 4.10, 4.15 and 9.05 hereof).

(3) The Registrar will not be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Supplemental Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(5) The Company will not be required:

(A) to issue, to register the transfer of or to exchange any Notes during a period of 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company will be affected by notice to the contrary.

(7) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile or electronic transmission (including a pdf).

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(9) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Supplemental Indenture or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Supplemental Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(10) Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depositary.

**Section 2.07** *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note if the Trustee's requirements are met. An indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Supplemental Indenture equally and proportionately with all other Notes duly issued hereunder.

**Section 2.08** *Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a Redemption Date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

**Section 2.09** *Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned will be so disregarded.

**Section 2.10** *Temporary Notes.*

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, will authenticate temporary Notes. Temporary Notes will be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary

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Notes and as will be reasonably acceptable to the Trustee. Without unreasonable delay, the Company will prepare and the Trustee will authenticate definitive Notes in exchange for temporary Notes.

Holders of temporary Notes will be entitled to all of the benefits of this Supplemental Indenture.

**Section 2.11** *Cancellation.*

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will return such canceled Notes to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

**Section 2.12** *Defaulted Interest.*

If the Company defaults in a payment of interest on the Notes, it will pay the defaulted interest in any lawful manner *plus*, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Company will fix or cause to be fixed each such special record date and payment date, *provided* that no such special record date will be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) will mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

**Section 2.13** *CUSIP Number.*

The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee will use CUSIP numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption will not be affected by any defect in or the omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the CUSIP numbers.

**Section 2.14** *Issuance of Additional Notes.*

The Company will be entitled, upon delivery of an Officer's Certificate and an Opinion of Counsel, subject to its compliance with Section 4.09 hereof, to issue Additional Notes under this Supplemental Indenture which will have identical terms as the Initial Notes issued on the date hereof, other than with respect to the date of issuance

and issue price. The Initial Notes issued on the date hereof and any Additional Notes issued will be treated as a single class for all purposes under this Supplemental Indenture.

With respect to any Additional Notes, the Company will set forth in a resolution of its Board of Directors and an Officer's Certificate, a copy of each which will be delivered to the Trustee, the following information:

- (a) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Supplemental Indenture; and
  - (b) the issue price, the issue date and the CUSIP number of such Additional Notes.
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### ARTICLE 3. REDEMPTION AND PREPAYMENT

#### Section 3.01 *Notice to Trustee.*

If the Company elects to redeem Notes pursuant to the redemption provisions of Section 3.07 hereof, it will furnish to the Trustee, at least 30 days but not more than 60 days before a Redemption Date, an Officers' Certificate setting forth:

- (i) the provision of this Supplemental Indenture pursuant to which the redemption will occur;
- (ii) the Redemption Date;
- (iii) the principal amount of Notes to be redeemed;
- (iv) the redemption price; and
- (v) the CUSIP numbers of the Notes to be redeemed.

#### Section 3.02 *Selection of Notes to Be Redeemed.*

If less than all of the Notes are to be redeemed at any time, the Trustee will select the Notes to be redeemed among the Holders of the Notes (a) in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, (b) if the Notes are not so listed, on a *pro rata* basis (unless otherwise required by law or applicable stock exchange or depository requirements). In the event of partial redemption by lot, the particular Notes to be redeemed will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the Redemption Date by the Trustee from the outstanding Notes not previously called for redemption.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected will be in amounts of \$2,000 or whole multiples of \$1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder, even if not a multiple of \$1,000, will be redeemed. Except as provided in the preceding sentence, provisions of this Supplemental Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

#### Section 3.03 *Notice of Redemption.*

At least 30 days but not more than 60 days before a Redemption Date, the Company will mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address.

The notice will identify the Notes to be redeemed, including the CUSIP numbers, and will state:

- (1) the Redemption Date;
- (2) the redemption price;
- (3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the Redemption Date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued in the name of the Holder of such Notes upon cancellation of the original Note;

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- (4) the name and address of the Paying Agent;
  - (5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
  - (6) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date;
  - (7) the paragraph of the Notes and/or Section of this Supplemental Indenture pursuant to which the Notes called for redemption are being redeemed; and
  - (8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company will have delivered to the Trustee, at least 45 days prior to the Redemption Date (or such shorter period as the Trustee in its sole discretion may allow), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

#### Section 3.04 *Effect of Notice of Redemption.*

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the Redemption Date at the redemption price; *provided*, that any redemption of Notes pursuant to this Supplemental Indenture may, at the Company's discretion, be subject to one or more

conditions precedent.

**Section 3.05** *Deposit of Redemption Price.*

One Business Day prior to the Redemption Date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued interest on all Notes to be redeemed on that date. The Trustee or the Paying Agent will promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued interest on, all Notes to be redeemed.

If the Company complies with the provisions of the preceding paragraph, on and after the Redemption Date, interest will cease to accrue on the Notes or the portions of Notes called for redemption. If a Note is redeemed on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest will be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption will not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest will be paid on the unpaid principal, from the Redemption Date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

**Section 3.06** *Notes Redeemed in Part.*

Upon surrender of a Note that is redeemed in part, the Company will issue and, upon the Company's written request, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

No Notes of \$2,000 or less can be redeemed in part.

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**Section 3.07** *Optional Redemption.*

(a) At any time prior to November 15, 2013, the Company may, on any one or more occasions, redeem, in whole or in part, up to 35% of the aggregate principal amount of the Notes, including Additional Notes of the same class, if any, issued under this Supplemental Indenture at a redemption price of par plus the stated interest rate, or 105.75% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to the date of redemption (the "Redemption Date"), with the net cash proceeds of one or more Equity Offerings; provided, that:

(1) at least 65% of the aggregate principal amount of the Notes, including Additional Notes of the same class, if any, issued under this Supplemental Indenture remains outstanding immediately after the occurrence of such redemption, excluding Notes held by the Company and its Subsidiaries; and

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) At any time prior to November 15, 2015, the Company, at its option, may on one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' prior notice, at a redemption price equal to 100% of the principal amount of Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to the Redemption Date, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date.

(c) Except pursuant to clauses (a) and (b) above, the Notes will not be redeemable at the Company's option prior to November 15, 2015.

(d) On or after November 15, 2015, the Company, at its option, may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices, expressed as percentages of principal amount, set forth below, plus accrued and unpaid interest on the Notes redeemed, to the applicable Redemption Date, if redeemed during the twelve-month period beginning on November 15 of the years indicated below:

Year	Percentage
2015	102.875%
2016	101.917%
2017	100.958%
2018 and thereafter	100.000%

**Section 3.08** *Mandatory Redemption.*

The Company is not required to make any mandatory redemption or sinking fund payments with respect to the Notes.

**Section 3.09** *Offer to Purchase by Application of Excess Proceeds.*

In the event that, pursuant to Section 4.10 hereof, the Company is required to commence an Asset Sale Offer, it will follow the procedures specified below.

The Asset Sale Offer will remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than five Business Days after the termination of the Offer Period (the "Purchase Date"), the Company will purchase the principal amount of Notes and such other *pari passu* Indebtedness required to be purchased pursuant to Section 4.10 hereof (the "Offer Amount") or, if less than the Offer Amount has been tendered, all Notes and such other *pari passu* Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid to the Person in whose name a Note is registered at the close of

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business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

Upon the commencement of an Asset Sale Offer, the Company will send, by first class mail, a notice to the Trustee and each of the Holders. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer will be made to all Holders and all holders of other Indebtedness that is *pari passu* with the Notes containing similar provisions to those set forth in this Supplemental Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets. The notice, which will govern the terms of the Asset Sale Offer, will state:

- (1) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer will remain open;
- (2) the Offer Amount, the purchase price and the Purchase Date;
- (3) that any Note not tendered or accepted for payment will continue to accrue interest;
- (4) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer will cease to accrue interest after the Purchase Date;
- (5) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may only elect to have all of such Note purchased and may not elect to have only a portion of such Note purchased;
- (6) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, or transfer by book-entry transfer, to the Company, a depository, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;
- (7) that Holders will be entitled to withdraw their election if the Company, the depository or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, facsimile or electronic transmission (including a pdf) or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;
- (8) that, if the aggregate principal amount of Notes and other *pari passu* Indebtedness surrendered by Holders exceeds the Offer Amount, the Trustee will select the Notes and the Company or its agent will select such other *pari passu* Indebtedness to be purchased on a *pro rata* basis or otherwise in accordance with DTC policies and procedures based on the principal amount of Notes and other *pari passu* Indebtedness surrendered (with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of \$2,000, or integral multiples of \$1,000 in excess thereof, will be purchased); and
- (9) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Purchase Date, the Company will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver to the Trustee an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.09. The Company, the Depository or the Paying Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon written request from the

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Company will authenticate and mail or deliver such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted will be promptly mailed or delivered by the Company to the Holder thereof.

Other than as specifically provided in this Section 3.09, any purchase pursuant to this Section 3.09 will be made pursuant to the provisions of Sections 3.01 through 3.06 hereof. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

## **ARTICLE 4. COVENANTS**

### **Section 4.01**     *Payment of Notes.*

The Company or a Guarantor will pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Company or a Guarantor will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest at the same rate to the extent lawful.

### **Section 4.02**     *Maintenance of Office or Agency.*

The Company will maintain in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Supplemental Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, the City of New York for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

### **Section 4.03**     *Reports.*

(a) Whether or not the Company is required by the rules and regulations of the SEC, so long as any Notes are outstanding, the Company will furnish to the Trustee and the Holders of Notes or cause the Trustee to furnish to the Holders of Notes (or file with the SEC for public availability) within the time periods specified in the SEC's rules and regulations:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Company were required to file such Forms, including a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and, with

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respect to the annual information only, a report on the annual financial statements by the Company’s independent registered public accountants (which will be firm(s) of established national reputation); and

(2) all current reports that would be required to be filed with the SEC on Form 8-K if the Company were required to file such reports.

In addition, whether or not required by the rules and regulations of the SEC, the Company will file a copy of all such information and reports referred to in clauses (1) and (2) above with the SEC for public availability within the time periods specified in the SEC’s rules and regulations, unless the SEC will not accept such a filing, and make such information available to securities analysts and prospective investors upon request. The Company will at all times comply with TIA Section 314(a). Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee’s receipt of such will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers’ Certificates).

(b) For so long as any Notes remain outstanding, the Company and the Guarantors 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.

(c) If the Company is no longer subject to the periodic reporting requirements of the Exchange Act for any reason, the Company will nevertheless continue filing the reports specified in the preceding paragraphs of this Section 4.03 with the SEC within the time periods specified above unless the SEC will not accept such a filing. The Company agrees that it will not take any action for the purpose of causing the SEC not to accept any such filings. If, notwithstanding the foregoing, the SEC will not accept the Company’s filings for any reason, the Company will post the reports referred to in the preceding paragraphs on its website within the time periods that would apply if it was required to file those reports with the SEC.

#### **Section 4.04** *Compliance Certificate.*

(a) The Company and each Guarantor (to the extent that such Guarantor is so required under the TIA) will deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers’ Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Supplemental Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Supplemental Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Supplemental Indenture (or, if a Default or Event of Default will have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as not contrary to the then current recommendations of the American Institute of Certified Public Accountants, the year-end financial statements delivered pursuant to Section 4.03(a) above will be accompanied by a written statement of the Company’s independent registered public accountants (who will be a firm of established national reputation) that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that the Company has violated any provisions of Article 4 or Article 5 hereof or, if any such violation has occurred, specifying the nature and period of existence thereof, it being understood that such accountants will not be liable directly or indirectly to any Person for any failure to obtain knowledge of any such violation.

(c) The Company will, so long as any of the Notes are outstanding, deliver to the Trustee, as soon as possible, but in no event later than five days after any Officer becoming aware of any Default or Event of Default,

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an Officers’ Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

#### **Section 4.05** *Taxes.*

The Company will pay, and will cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

#### **Section 4.06** *Stay, Extension and Usury Laws.*

The Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Supplemental Indenture; and the Company and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

#### **Section 4.07** *Restricted Payments.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any other payment or distribution on account of the Company’s Equity Interests, including, without limitation, any payment in connection with any merger or consolidation involving the Company, or to the direct or indirect holders of the Company’s Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests, other than Disqualified Stock, of the Company);

(ii) purchase, redeem or otherwise acquire or retire for value, including, without limitation, in connection with any merger or consolidation involving the Company, any Equity Interests of the Company;

(iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or the Guarantees (excluding any intercompany Indebtedness between or among the Company or any of

its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity of such Indebtedness; *provided*, that this restriction does not apply to a purchase, redemption or defeasance made in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of date of such purchase, redemption or defeasance; or

- (iv) make any Restricted Investment;

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as “*Restricted Payments*”) unless, at the time of and after giving effect to such Restricted Payment:

- (a) no Default or Event of Default will have occurred and be continuing or would occur as a consequence of such Restricted Payment; and

(b) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of Section 4.09 hereof; and

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(c) Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company or any of its Restricted Subsidiaries after August 10, 1998, excluding Restricted Payments permitted by clauses (ii), (iii), (iv), (vi) and (x) of the next succeeding paragraph, is less than the sum, without duplication, of:

(i) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing August 10, 1998 to the end of the Company’s most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit, *plus*

(ii) 100% of the aggregate net cash proceeds or the fair market value of property other than cash received by the Company since August 10, 1998 as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Company (other than Disqualified Stock), or from the issue or sale of Disqualified Stock or debt securities of the Company that have been converted into or exchanged for such Equity Interests, other than Equity Interests, Disqualified Stock or debt securities sold to a Restricted Subsidiary of the Company, plus

(iii) to the extent not already included in Consolidated Net Income of the Company for such period and without duplication, any Restricted Investment that was made by the Company or any of its Restricted Subsidiaries after August 10, 1998 is sold for cash or otherwise liquidated or repaid for cash, or any Unrestricted Subsidiary which is designated as an Unrestricted Subsidiary subsequent to August 10, 1998 is sold for cash or otherwise liquidated or repaid for cash or redesignated as a Restricted Subsidiary, 100% of the cash return of capital with respect to such Restricted Investment or Unrestricted Subsidiary, less the cost of disposition, if any plus 50% of the excess of the fair market value of the Company’s Investment in such Unrestricted Subsidiary as of the date of such redesignation over the amount of the Restricted Investment that reduced this clause (c); *provided*, that any amounts that increase this clause (c) will not duplicatively increase amounts available as Permitted Investments.

The preceding provisions will not prohibit:

(i) the payment of any dividend or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Supplemental Indenture;

(ii) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale, other than to a Restricted Subsidiary of the Company, of Equity Interests of the Company (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Company; *provided* that the amount of any such net cash proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition will be excluded from clause (c)(ii) of the preceding paragraph;

(iii) the payment, purchase, defeasance, retirement redemption, repurchase or other acquisition (a) of subordinated Indebtedness of the Company or any Restricted Subsidiary of the Company with the net cash proceeds from an incurrence of Permitted Refinancing Indebtedness or (b) of any Disqualified Stock of the Company in exchange for, or out of the net cash proceeds of the substantially concurrent sale of, Disqualified Stock of the Company that is not prohibited by the terms of this Supplemental Indenture to be issued;

(iv) the payment of dividends on the Company’s common stock of up to a combined amount of \$75.0 million per annum; provided that up to \$20.0 million of such amount that is not utilized by the Company to pay dividends in any calendar year may be carried forward to any subsequent year;

(v) (a) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Company that are held by any member of the Company’s, or any of its Restricted

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Subsidiaries’, management pursuant to any management equity subscription agreement or stock option agreement or (b) the repurchase of Equity Interests of the Company or any Restricted Subsidiary of the Company held by employee benefits plans, whether directly or for employees, directors or former directors, pursuant to the terms of agreements, other than management equity subscription agreements or stock option agreements, approved by the Company’s Board of Directors; *provided* that, in the case of foregoing clause (a) the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests will not exceed \$50.0 million in the aggregate since the date of this Supplemental Indenture and, in the case of foregoing clause (b), the aggregate purchase price paid for all such repurchased Equity Interests will not exceed \$25.0 million in any twelve-month period;

(vi) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options;

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

(viii) the payment of any dividend by a Restricted Subsidiary to the holders of all of its Equity Interests on a pro rata basis;



(ix) other Restricted Payments in an aggregate amount since the date of this Supplemental Indenture not to exceed \$150.0 million under this clause (ix); and

(x) other Restricted Payments of the kind contemplated by clause (i) or (ii) of the definition of Restricted Payments if, immediately after giving effect to such Restricted Payment as if it had occurred at the beginning of the Company's most recently ended four full fiscal quarters for which internal financial statements are available, the Company's Leverage Ratio would have been less than 3.5 to 1.0;

*provided* that, with respect to clauses (iv), (ix) and (x) above, no Default or Event of Default will have occurred and be continuing immediately after such transaction or as a consequence thereof.

The amount of all Restricted Payments, other than cash, will be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this Section 4.07 will be determined by the Board of Directors of the Company whose resolution with respect thereto will be delivered to the Trustee.

If any Restricted Investment is sold or otherwise liquidated or repaid or any dividend or payment is received by the Company or a Restricted Subsidiary of the Company and such amounts may be credited to clause (c) above, then such amounts will be credited only to the extent of amounts not otherwise included in Consolidated Net Income and that do not otherwise increase the amount available as a Permitted Investment.

#### **Section 4.08** *Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries.*

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

- (a) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;
  - (b) make loans or advances to the Company or any of its Restricted Subsidiaries; or
  - (c) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.
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However, the preceding restrictions do not apply to such encumbrances or restrictions existing under or by reason of

- (a) agreements governing Existing Indebtedness as in effect on the date of this Supplemental Indenture;
  - (b) other encumbrances and restrictions in effect on the date of this Supplemental Indenture;
  - (c) any Credit Facilities, including the Existing Credit Facilities, as in effect on the date of this Supplemental Indenture, and any extensions, amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings thereof and other Credit Facilities not prohibited under this Supplemental Indenture, *provided* that such extensions, amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings and other Credit Facilities are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in the Existing Credit Facilities as in effect on the date of this Supplemental Indenture;
  - (d) the several indentures governing the Notes, the Existing Senior Notes and the related Guarantees;
  - (e) applicable law or any applicable rule, regulation or order;
  - (f) existing with respect to any Person or the property or assets of such person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition, and not incurred in connection with or in contemplation of such acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, *provided*, that in the case of Indebtedness, such Indebtedness was permitted by the terms of this Supplemental Indenture to be incurred;
  - (g) customary non-assignment provisions in leases or other contracts entered into in the ordinary course of business;
  - (h) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (c) of the preceding paragraph;
  - (i) Indebtedness of Restricted Subsidiaries; *provided* that such Indebtedness was not prohibited under this Supplemental Indenture;
  - (j) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;
  - (k) Liens securing Indebtedness otherwise permitted to be incurred under the provisions of Section 4.12 hereof that limit the right of the debtor to dispose of the assets subject to such Liens;
  - (l) 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 entered into in the ordinary course of business;
  - (m) any Purchase Money Note, or other Indebtedness or other contractual requirements of a Securitization Entity in connection with a Qualified Securitization Transaction; *provided* that such restrictions may apply only to such Securitization Entity;
  - (n) any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary pending the closing of such sale or disposition;
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(o) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; and

(p) any encumbrance or restriction of the type referred to in clauses (a) through (c) of the first paragraph of this Section 4.08 imposed by any extension, amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of an agreement, contract, instrument or obligation referred to in clauses (a) through (o) above that is not materially more restrictive, taken as a whole, than the encumbrance or restriction imposed by the applicable predecessor agreement, contract, instrument or obligation.

**Section 4.09** *Incurrence of Indebtedness and Issuance of Disqualified and Preferred Stock.*

The Company will not, and will not permit any of its Restricted Subsidiaries to Incur any Indebtedness, including Acquired Debt, and the Company will not issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; *provided, however*, that the Company may Incur Indebtedness, including Acquired Debt, or issue Disqualified Stock and any of the Company's Restricted Subsidiaries may Incur Indebtedness if the Company's Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock is issued would have been at least 2.0 to 1, determined on a pro forma basis, including a pro forma application of the net proceeds therefrom, as if the additional Indebtedness had been Incurred, or the Disqualified Stock had been issued, as the case may be, at the beginning of such four-quarter period.

The provisions of the first paragraph of this Section 4.09 will not prohibit the Incurrence of any of the following items of Indebtedness, Disqualified Stock or the issuance of preferred stock, as applicable (collectively, "*Permitted Debt*"):

(i) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness under Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (i), with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Company and its Restricted Subsidiaries thereunder, not to exceed \$2.5 billion *less* the aggregate amount of all Net Proceeds of Asset Sales applied by the Company or any of its Restricted Subsidiaries since the date of this Supplemental Indenture to repay any term Indebtedness under any Credit Facility or to repay any revolving credit Indebtedness under any Credit Facility pursuant to Section 4.10 hereof;

(ii) the Incurrence by the Company and its Restricted Subsidiaries of the Existing Indebtedness;

(iii) the Incurrence by the Company and the Guarantors of Indebtedness represented by the Notes and the Guarantees to be issued on the date of this Supplemental Indenture;

(iv) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, Incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Company or any of its Restricted Subsidiaries, in an aggregate principal amount, including all Permitted Refinancing Indebtedness Incurred to refund, refinance or replace any Indebtedness Incurred pursuant to this clause (iv), not to exceed 7.5% of Total Assets at any time outstanding;

(v) the Incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness;

(vi) the Incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries; *provided, however*, that:

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(i) if the Company or any Guarantor is the obligor on such Indebtedness and the payee is not the Company or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Company, or any such Guarantor's Guarantee, in the case of a Guarantor; and

(ii) (a) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary of the Company and (b) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary of the Company will be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (vi);

(vii) the Incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations that are Incurred in the normal course of business and not for speculative purposes;

(viii) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in the ordinary course of business solely in respect of performance, bid, surety, appeal and similar bonds, completion or performance guarantees or standby letters of credit (not supporting Indebtedness for borrowed money) issued for the purpose of supporting workers' compensation liabilities of the Company or any of its Restricted Subsidiaries;

(ix) the Incurrence of Indebtedness arising from agreements of the Company or a Restricted Subsidiary of the Company providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business, assets or a Subsidiary;

(x) the Incurrence by a Restricted Subsidiary of the Company of Indebtedness in connection with and in contemplation of, the concurrent disposition of such Restricted Subsidiary to the stockholders of the Company; *provided* that such disposition occurs concurrently with such Incurrence and following such disposition, neither the Company nor any of its Restricted Subsidiaries has any liability with respect to such Indebtedness;

(xi) the Incurrence by a Securitization Entity of Indebtedness in a Qualified Securitization Transaction that is Non-Recourse Debt with respect to the Company and its Restricted Subsidiaries (other than Securitization Entities), except for Standard Securitization Undertakings and Limited Originator Recourse;

(xii) the guarantee by the Company or any Restricted Subsidiary of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be Incurred by another provision of this Section 4.09;

(xiii) the Incurrence of Indebtedness of the Company or a Restricted Subsidiary owed to, including obligations in respect of letters of credit for the benefit of, any Person in connection with workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance provided by such Person to the Company or a Restricted Subsidiary of the Company, pursuant to reimbursement or indemnification obligations to such Person, in each case Incurred in the ordinary course of business;

(xiv) the Incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within two business days of its Incurrence;

(xv) the issuance of shares of preferred stock by a Restricted Subsidiary to the Company or another Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any

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other subsequent transfer of any such shares of preferred stock (except to the Company or another Restricted Subsidiary) will be deemed in each case to be an issuance of such shares of preferred stock that was not permitted by this clause (xv); and

(xvi) the Incurrence by the Company or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount, or accreted value, as applicable, at any time outstanding, including all Permitted Refinancing Indebtedness Incurred to refund, refinance or replace any Indebtedness Incurred pursuant to this clause (xvi), not to exceed \$350.0 million.

The Company will not Incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Company unless such Indebtedness is also contractually subordinated in right of payment to the Notes on substantially identical terms; *provided, however*, that no Indebtedness of the Company will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Company solely by virtue of being unsecured or by virtue of being secured on first or junior Lien basis.

For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (i) through (xvi) above, or is entitled to be Incurred pursuant to the first paragraph of this Section 4.09, the Company, in its sole discretion, will be permitted to classify such item of Indebtedness on the date of its Incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.09, except that Indebtedness under Credit Facilities outstanding on the date on which Notes are first issued and authenticated under this Supplemental Indenture will initially be deemed to have been Incurred on such date in reliance on the exception provided by clause (i) of the definition of Permitted Debt.

The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same or substantially similar terms, the reclassification of Equity Interests as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same or a substantially similar class of Disqualified Stock will not be deemed to be an Incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 4.09. For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Company or any Restricted Subsidiary may Incur pursuant to this covenant will not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

#### **Section 4.10**     *Asset Sales.*

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

(i) the Company or the Restricted Subsidiary, as the case may be, receives consideration (including assumption of liabilities) at the time of the Asset Sale at least equal to the fair market value (measured as of the date of the definitive agreement with respect to such Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of;

(ii) the fair market value is determined by the Company's Board of Directors or Chief Financial Officer and evidenced by an Officers' Certificate delivered to the Trustee with respect to any Asset Sale determined to have a fair market value greater than \$100.0 million; and

(iii) 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 Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:

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(w) any liabilities, as shown on the Company's or such Restricted Subsidiary's most recent consolidated balance sheet, of the Company or any Restricted Subsidiary, other than contingent liabilities and liabilities of the Company that are by their terms subordinated to the Notes or any Guarantee thereof, that are assumed by the transferee of any such assets;

(x) 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 after the consummation of such Asset Sale, to the extent of the cash received in that conversion;

(y) any Designated Noncash Consideration received by the Company or any of its Restricted Subsidiaries in such Asset Sale; *provided* that the aggregate fair market value, as determined above, of such Designated Noncash Consideration, taken together with the fair market value at the time of receipt of all other Designated Noncash Consideration received pursuant to this clause (y) less the amount of Net Proceeds previously realized in cash from prior Designated Noncash Consideration is less than 7.5% of Total Assets at the time of the receipt of such Designated Noncash Consideration, with the fair market value of each item of Designated Noncash Consideration being measured at the time received and without giving effect to subsequent changes in value; and

(z) Additional Assets;

*provided*, that this clause (iii) will not be applicable to any sale or other disposition of all or a portion of the business constituting the aerospace and technologies segment of the Company.

Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Company (or the applicable Restricted Subsidiary, as the case may be) may, at its option and to the extent the Company elects, apply those Net Proceeds:

(a) to repay Indebtedness and other Obligations under any Credit Facility;

(b) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Company;

(c) to make a capital expenditure in a Permitted Business;

(d) to acquire other long-term assets that are used or useful in a Permitted Business; or

(e) to make an Investment in Additional Assets; *provided*, that the Company will be deemed to have complied with this clause (e) if, within 365 days of such Asset Sale, the Company will have entered into a definitive agreement covering such Investment which is thereafter completed within 365 days after the first anniversary of such Asset Sale.

Pending the final application of any Net Proceeds, the Company (or the applicable Restricted Subsidiary) may temporarily reduce Indebtedness or otherwise invest the Net Proceeds in any manner that is not prohibited by this Supplemental Indenture.

Any Net Proceeds from Asset Sales that are not applied or invested as provided in the second preceding paragraph will constitute “*Excess Proceeds*.” When the aggregate amount of Excess Proceeds exceeds \$50.0 million, the Company will make an offer to all Holders of Notes and all holders of other Indebtedness that is *pari passu* with the Notes containing provisions similar to those set forth in this Supplemental Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets (an “*Asset Sale Offer*”) to purchase the maximum principal amount of Notes and such other *pari passu* Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and

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unpaid interest to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company may use those Excess Proceeds for any purpose not otherwise prohibited by this Supplemental Indenture. If the aggregate principal amount of Notes and other *pari passu* Indebtedness tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee will select the Notes and such other *pari passu* Indebtedness to be purchased on a pro rata basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

#### **Section 4.11** *Transactions With Affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, 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, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate involving aggregate consideration in excess of \$10.0 million (each of the foregoing, an “*Affiliate Transaction*”), unless

(1) such Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(2) the Company delivers to the Trustee:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50.0 million, a resolution of the Board of Directors of the Company set forth in an Officers’ Certificate certifying that such Affiliate Transaction complies with clause (1) above and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of the Company; and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$100.0 million, an opinion as to the fairness to the Company of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a) hereof:

(1) any employment agreement, employee benefit plan, officer or director indemnification agreement, severance or termination agreement, or any similar arrangement entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;

(2) transactions between or among the Company and/or its Restricted Subsidiaries;

(3) transactions between or among the Company and/or its Restricted Subsidiaries with Ball Asia Pacific and Permitted Joint Ventures on terms that are no less favorable to the Company and/or such Subsidiary than those that would have been obtained in a comparable transaction by the Company and/or such Subsidiary with an unrelated Person;

(4) any sale or other issuance of Equity Interests, other than Disqualified Stock, to Affiliates of the Company;

(5) Restricted Payments and Investments that do not violate the provisions of Section 4.07 hereof;

(6) fees and compensation paid to members of the Board of Directors of the Company and its Restricted Subsidiaries in their capacity as such;

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(7) advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business;

(8) fees and compensation paid to, and indemnity provided on behalf of, officers, directors or employees of the Company or any of its Restricted Subsidiaries, as determined by the Board of Directors of the Company or of any such Restricted Subsidiary, to the extent such fees and compensation are reasonable and customary;

(9) transactions effected as part of a Qualified Securitization Transaction;

(10) the grant of stock options or similar rights to officers, employees, consultants and directors of the Company and, to the extent otherwise permitted under this Supplemental Indenture, to any Restricted Subsidiary, pursuant to plans approved by the Board of Directors of the Company and issuance of securities pursuant thereto; and

(11) transactions pursuant to any arrangement, contract or agreement in existence on the date of this Supplemental Indenture, as such arrangement may be amended or restated, renewed, extended, refinanced, refunded or replaced from time to time, *provided* that any such amendment or restatement, renewal, extension, refinancing, refund or replacement is on terms and conditions not materially less favorable to the Company or its Restricted Subsidiaries taken as a whole than the arrangement, contract or agreement in existence on the date of this Supplemental Indenture.

#### **Section 4.12** *Liens.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness, Attributable Debt, or trade payables, other than Permitted Liens, upon any of their property or assets, now owned or hereafter acquired, unless all payments due under this Supplemental Indenture and the Notes are secured on an equal and ratable basis with the obligations so secured until such time as such obligations are no longer secured by a Lien.

#### **Section 4.13** *Business Activities.*

The Company will not, and will not permit any Restricted Subsidiary to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Company and its Restricted Subsidiaries taken as a whole.

#### **Section 4.14** *Corporate Existence.*

Subject to Articles 5 and 10 hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect (i) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries and any Unrestricted Subsidiary with \$20.0 million of net sales in the most recent twelve month period or assets of \$20.0 million, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company, any Restricted Subsidiary or any Unrestricted Subsidiary with \$20.0 million of net sales in the most recent twelve month period or assets of \$20.0 million and (ii) the rights (charter and statutory), licenses and franchises of the Company, its Restricted Subsidiaries and any Unrestricted Subsidiary with \$20.0 million of net sales in the most recent twelve month period or assets of \$20.0 million; *provided, however*, that the Company will not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if the Board of Directors will determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

#### **Section 4.15** *Offer to Purchase Upon Change of Control.*

(a) If a Change of Control occurs, and the Company does not redeem the Notes as described in Section 3.07 hereof within 60 days after the Change of Control, each Holder of Notes will have the right to require

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the Company to repurchase all or any part, equal to \$2,000 or an integral multiple of \$1,000 in excess thereof, of that Holder's Notes pursuant to the offer described below (the "*Change of Control Offer*") at an offer price in cash equal to 101% of the aggregate principal amount of the Notes repurchased plus accrued and unpaid interest to the date of purchase (the "*Change of Control Payment*"). Within 30 days following any Change of Control, or, at the Company's option, prior to the consummation of such Change of Control but after the public announcement thereof, the Company will mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the date specified in such notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the "*Change of Control Payment Date*"), pursuant to the procedures required by this Supplemental Indenture and described in such notice. The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of this Supplemental Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of this Supplemental Indenture by virtue of such compliance.

(b) On the Change of Control Payment Date, the Company will, to the extent lawful,

- (1) accept for payment all Notes or portions of the Notes (in integral multiples of \$1,000) properly tendered pursuant to the Change of Control Offer;
- (2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of the Notes properly tendered;

and

- (3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of the Notes being purchased by the Company.

The Paying Agent will promptly mail to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail, or cause to be transferred by book entry, to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof.

The provisions described above that require the Company to make a Change of Control Offer following a Change of Control will be applicable whether or not any other provisions of this Supplemental Indenture are applicable. Except as described above with respect to a Change of Control, this Supplemental Indenture does not contain provisions that permit the Holders of the Notes to require that the Company repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

(c) Notwithstanding anything to the contrary in this Section 4.15, the Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Supplemental Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07, unless and until there is a default in payment of the applicable redemption price. Notwithstanding anything to the contrary contained herein, a Change of Control Offer may be made in advance of a Change of Control, conditioned upon the consummation of such Change of Control, if a definitive agreement is in place for the Change of Control at the time the Change of Control Offer is made.

#### **Section 4.16** *Additional Guarantees.*

If the Company or any of its Restricted Subsidiaries acquires or creates another Domestic Subsidiary after the date of this Supplemental Indenture and such newly acquired or created Domestic Subsidiary Guarantees (or is a guarantor of) any other Indebtedness of the Company, then that newly acquired or created Domestic Subsidiary will

become a Guarantor and execute and deliver a supplemental indenture to the Trustee in the form of Exhibit C within 20 business days of the date on which it was acquired or created; *provided*, that this Section 4.16 does not apply to any Subsidiary that has properly been designated as an Unrestricted Subsidiary in accordance with this Supplemental Indenture for so long as it continues to constitute an Unrestricted Subsidiary or to any Excluded Subsidiary for so long as it continues to constitute an Excluded Subsidiary.

**Section 4.17**     *[Reserved.]*

**Section 4.18**     *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; *provided* that the Company or any Restricted Subsidiary may enter into a sale and leaseback transaction if:

- (i) the Company or such Restricted Subsidiary, as applicable, could have incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction pursuant to Section 4.09 hereof;
- (ii) the gross cash proceeds of such sale and leaseback transaction are at least equal to the fair market value, as determined in good faith by the Board of Directors and set forth in an Officers' Certificate delivered to the Trustee, of the property that is the subject of that sale and leaseback transaction; and
- (iii) the transfer of assets in that sale and leaseback transaction is permitted by, and the Company applies the proceeds of such transaction in compliance with, Section 4.10 hereof.

**Section 4.19**     *Designation of Restricted and Unrestricted Subsidiaries.*

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate fair market value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary properly designated will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under the first paragraph of Section 4.07 hereof or Permitted Investments, as determined by the Company. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors may at any time redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if the redesignation would not cause a Default.

**Section 4.20**     *Changes in Covenants When Notes Rated Investment Grade.*

If on any date following the date of this Supplemental Indenture:

- (i) the Notes are rated Investment Grade by at least two of the Rating Agencies, and
- (ii) no Default or Event of Default will have occurred and be continuing,

then beginning on that day and continuing at all times thereafter regardless of any subsequent changes in the rating of the Notes, the Company and its Subsidiaries will not be subject to the provisions of this Supplemental Indenture described in Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.19 and clause (iv) of Section 5.01.

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**ARTICLE 5.  
SUCCESSORS**

**Section 5.01**     *Merger, Consolidation or Sale of Assets.*

The Company will not, directly or indirectly: (1) consolidate or merge with or into another person, whether or not the Company is the surviving corporation, or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to another Person unless:

- (i) either: (a) the Company is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger, if other than the Company, or to which such sale, assignment, transfer, conveyance or other disposition will have been made is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia and, if such entity is not a corporation, a co-obligor of the Notes is a corporation organized or existing under any such laws;
- (ii) the Person formed by or surviving any such consolidation or merger, if other than the Company, or the Person to which such sale, assignment, transfer, conveyance or other disposition will have been made assumes all the obligations of the Company under the Notes and this Supplemental Indenture pursuant to agreements reasonably satisfactory to the Trustee;
- (iii) immediately after such transaction no Default or Event of Default exists; and
- (iv) either:
  - (a) except in the case of a merger of the Company with or into a Subsidiary, the Company or the Person formed by or surviving any such consolidation or merger, if other than the Company, or to which such sale, assignment, transfer, conveyance or other disposition will have been made will on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of Section 4.09 hereof or
  - (b) the Fixed Charge Coverage Ratio for the Company or the Person formed by or surviving any such consolidation or merger, if other than the Company, or to which such sale, assignment, transfer, conveyance or other disposition will have been made would, immediately after giving pro forma effect thereto and any related financing transactions as if same had occurred at the beginning of the applicable four-quarter period, not be less than such Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries immediately prior to such transaction,

*provided, however*, that clause (iv) above does not apply if, in the good faith determination of the Board of Directors of the Company, whose determination will be evidenced by a board resolution, the purpose of such transactions is to change the state of incorporation of the Company. The Company may not, directly or indirectly, lease all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to any other Person. The provisions of this Section 5.01 will not apply to a sale, assignment, transfer, conveyance or other disposition of assets between or among the Company and its Restricted Subsidiaries.

**Section 5.02** *Successor Corporation Substituted.*

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01 hereof, the successor corporation formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made will succeed to, and be substituted for (so that

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from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Supplemental Indenture referring to the “Company” will refer instead to the successor corporation and not to the Company), and may exercise every right and power of the Company under this Supplemental Indenture with the same effect as if such successor Person had been named as the Company herein; *provided, however*, that the predecessor Company will not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company’s assets that meets the requirements of Section 5.01 hereof.

**ARTICLE 6.  
DEFAULTS AND REMEDIES**

**Section 6.01** *Events of Default.*

Each of the following is an “*Event of Default*.”

- (a) default for 30 days in the payment when due of interest on the Notes;
- (b) default in the payment when due of principal of or premium, if any, on the Notes;
- (c) the Company or any of its Restricted Subsidiaries fails to comply with the provisions of Section 5.01 hereof;
- (d) the Company or any of its Restricted Subsidiaries fails for 30 days after notice from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Notes to comply with the provisions of Sections 4.07, 4.09, 4.10 or 4.15 hereof;
- (e) the Company or any of its Restricted Subsidiaries fails for 60 days after notice from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Notes to comply with any of the other agreements in this Supplemental Indenture or the Notes;
- (f) the Company or any of its Restricted Subsidiaries (other than a Securitization Entity) defaults under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (other than a Securitization Entity) (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries (other than a Securitization Entity)) whether such Indebtedness or guarantee now exists, or is created after the date of this Supplemental Indenture, if that default:
  - (1) is caused by a failure to pay principal of or premium, if any, or interest on such Indebtedness on or before the expiration of the grace period provided in such Indebtedness on the date of such default (a “*Payment Default*”); or
  - (2) results in the acceleration of such Indebtedness prior to its express maturity,

in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$50.0 million or more or its foreign currency equivalent;

(g) the Company or any of its Restricted Subsidiaries fails to pay final judgments aggregating in excess of \$50.0 million or its foreign currency equivalent, excluding amounts covered by insurance, which judgments are not paid, discharged or stayed for a period of 60 days;

(h) except as permitted by this Supplemental Indenture, any Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Guarantee.

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(i) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law:

- (i) commences a voluntary case,
- (ii) consents to the entry of an order for relief against it in an involuntary case,
- (iii) consents to the appointment of a custodian of it or for all or substantially all of its property,
- (iv) makes a general assignment for the benefit of its creditors,
- (v) generally is not paying its debts as they become due; or
- (j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (i) is for relief against the Company or any of its Significant Subsidiaries that are Restricted Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary in an involuntary case;

(ii) appoints a custodian of the Company or any of its Significant Subsidiaries that are Restricted Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Significant Subsidiaries that are Restricted Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary; or

(iii) orders the liquidation of the Company or any of its Significant Subsidiaries that are Restricted Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary; and

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

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**Section 6.02**      *Acceleration.*

If any Event of Default (other than an Event of Default specified in clause (h) or (i) of Section 6.01 hereof) with respect to the Company, any Significant Subsidiary that is a Restricted Subsidiary, as applicable, or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes will become due and payable immediately. Notwithstanding the foregoing, if an Event of Default specified in clause (h) or (i) of Section 6.01 hereof occurs with respect to the Company, any of its Significant Subsidiaries that are Restricted Subsidiaries or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, all outstanding Notes will be due and payable without further action or notice. Holders of the Notes may not enforce this Supplemental Indenture or the Notes except as provided in this Supplemental Indenture.

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 this Supplemental Indenture, an equivalent premium will also become and be immediately due and payable to the extent permitted by law upon the acceleration of the Notes.

The Company is required to deliver to the Trustee annually a statement regarding compliance with this Supplemental Indenture, and the Company is required upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

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**Section 6.03**      *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Supplemental Indenture.

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

**Section 6.04**      *Waiver of Past Defaults.*

The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under this Supplemental Indenture except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes (including in connection with an offer to purchase); *provided, however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default or Event of Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured for every purpose of this Supplemental Indenture; but no such waiver will extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

**Section 6.05**      *Control by Majority.*

Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Supplemental Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

**Section 6.06**      *Limitation on Suits.*

A Holder of a Note may pursue a remedy with respect to this Supplemental Indenture or the Notes only if:

- (a) the Holder of a Note gives to the Trustee written notice of a continuing Event of Default;
- (b) the Holders of at least 25% in principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;
- (c) such Holder of a Note or Holders of Notes offer and, if requested, provide to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of indemnity; and
- (e) during such 60-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder of a Note may not use this Supplemental Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to any Holder).

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**Section 6.07**      *Rights of Holders of Notes to Receive Payment.*



Notwithstanding any other provision of this Supplemental Indenture, the right of any Holder of a Note to receive payment of principal, premium and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, will not be impaired or affected without the consent of such Holder.

**Section 6.08**      *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(a) or (b) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as Trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

**Section 6.09**      *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and will be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee will consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a Lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

**Section 6.10**      *Priorities.*

If the Trustee collects any money pursuant to this Article, it will pay out the money in the following order:

*First:* to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

*Second:* to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

*Third:* to the Company.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

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**Section 6.11**      *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Supplemental Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

**ARTICLE 7.  
TRUSTEE**

**Section 7.01**      *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Supplemental Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee will be determined solely by the express provisions of this Supplemental Indenture and the Trustee need perform only those duties that are specifically set forth in this Supplemental Indenture and no others, and no implied covenants or obligations will be read into this Supplemental Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Supplemental Indenture, but in the case of any such certificates of opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee will be under a duty to examine the same to determine whether or not they conform to the requirements of this Supplemental Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Supplemental Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c), (e) and (f) of this Section and Section 7.02.

(e) No provision of this Supplemental Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Supplemental Indenture at the request of any Holders, unless such Holder will have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

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(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

#### **Section 7.02** *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Supplemental Indenture.

(e) Unless otherwise specifically provided in this Supplemental Indenture, any demand, request, direction or notice from the Company or any Guarantor will be sufficient if signed by an Officer of the Company or Guarantor issuing such demand, request or notice.

(f) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Supplemental Indenture at the request or direction of any of the Holders unless such Holders will have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) Whenever in the administration of this Supplemental Indenture, the Trustee will deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate.

(h) The Trustee will not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Supplemental Indenture.

(i) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

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(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

(l) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Supplemental Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person as so authorized in any such certificate previously delivered and not superseded.

#### **Section 7.03** *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as Trustee (if this Supplemental Indenture has been qualified under the Trust Indenture Act) or resign. Any Agent may exercise the same rights, with the same duties, as the Trustee under this Section 7.03. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

#### **Section 7.04** *Trustee's Disclaimer.*

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Supplemental Indenture or the Notes, it will not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Supplemental Indenture, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Supplemental Indenture other than its certificate of authentication.

#### **Section 7.05** *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is actually known to a Responsible Officer of the Trustee, the Trustee will mail to Holders of Notes a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default relating to the payment of principal of or interest on any Note, the Trustee may withhold the notice from Holders of the Notes if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

**Section 7.06**     *Reports by Trustee to Holders of the Notes.*

Within 60 days after each May 15 beginning with the May 15 following the date of this Supplemental Indenture, and for so long as Notes remain outstanding, the Trustee will mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA Section 313(a) (but if no event described in TIA Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA Section 313(b)(2). The Trustee will also transmit by mail all reports as required by TIA Section 313(c).

A copy of each report at the time of its mailing to the Holders of Notes will be mailed to the Company and filed with the SEC and each stock exchange on which the Notes are listed in accordance with TIA Section 313(d). The Company will promptly notify the Trustee when the Notes are listed on any stock exchange or delisted therefrom.

**Section 7.07**     *Compensation and Indemnity.*

The Company and the Guarantors will pay to the Trustee from time to time such reasonable compensation as agreed upon in writing for its acceptance of this Supplemental Indenture and services hereunder. The Trustee's

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compensation will not be limited by any law on compensation of a Trustee of an express trust. The Company and the Guarantors will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company and the Guarantors will, jointly and severally, indemnify the Trustee against any and all losses, liabilities, claims, damages or expenses (including taxes other than taxes based upon the income of the Trustee) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Supplemental Indenture, including the costs and expenses of enforcing this Supplemental Indenture against the Company and the Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Company and the Guarantors or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence or willful misconduct. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company and the Guarantors of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld.

The obligations of the Company and the Guarantors under this Section 7.07 shall be joint and several and will survive the satisfaction and discharge of this Supplemental Indenture.

To secure the Company's and the Guarantors' payment obligations in this Section, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Supplemental Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(g) or (h) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee will comply with the provisions of TIA Section 313(b)(2) to the extent applicable.

**Section 7.08**     *Replacement of Trustee.*

A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of Notes of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10 hereof;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the

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Holders of a majority in aggregate principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of Notes of at least 10% in principal amount of the then outstanding Notes may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder of a Note who has been a Holder of a Note for at least six months, fails to comply with Section 7.10, such Holder of a Note may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Supplemental Indenture. The successor Trustee will mail a notice of its succession to Holders of the Notes. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee, provided all sums owing to the Trustee (including its agents and/or counsel) hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee.

**Section 7.09**     *Successor Trustee by Merger, Etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Trustee.

**Section 7.10**     *Eligibility; Disqualification.*

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate Trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100.0 million as set forth in its most recent published annual report of condition.

This Supplemental Indenture will always have a Trustee who satisfies the requirements of TIA Section 310(a)(1), (2) and (5). The Trustee is subject to TIA Section 310(b).

**Section 7.11**     *Preferential Collection of Claims Against Company.*

The Trustee is subject to TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed will be subject to TIA Section 311(a) to the extent indicated therein.

**Section 7.12**     *Trustee's Application for Instructions from the Company.*

Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Supplemental Indenture and the date on and/or after which such action will be taken or such omission will be effective. The Trustee will not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date will not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer will have consented in writing to any earlier date) unless prior to the taking of such action (or the effective date in the case of an omission), the Trustee will have received written instructions in response to such application specifying the action to be taken or omitted.

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**ARTICLE 8.**  
**LEGAL DEFEASANCE AND COVENANT DEFEASANCE**

**Section 8.01**     *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Company may, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, at any time, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

**Section 8.02**     *Legal Defeasance and Discharge.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company and the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes and to have each Guarantor's obligation discharged with respect to its Guarantee on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, 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, which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Supplemental Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Notes and this Supplemental Indenture (and the Trustee, on demand of and at the expense of the Company, will execute proper instruments acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive solely from the trust fund described in Section 8.04 hereof, and as more fully set forth in such Section, payments in respect of the principal of, interest on such Notes when such payments are due, (b) the Company's obligations with respect to the Notes under Article 2 and Section 4.02 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's and the Guarantors' obligations in connection therewith and (d) this Article 8. Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

**Section 8.03**     *Covenant Defeasance.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and each Restricted Subsidiary will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Sections 3.09, 4.03, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.15, 4.16, 4.17 and 4.19 and clause (iv) of Section 5.01 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company, each Guarantor and each Restricted Subsidiary may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Supplemental Indenture and such Notes will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(d) through 6.01(f) hereof will not constitute Events of Default.

**Section 8.04**     *Conditions to Legal or Covenant Defeasance.*

The following will be the conditions to the application of either Section 8.02 or 8.03 hereof to the outstanding Notes:

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In order to exercise either Legal Defeasance or Covenant Defeasance:

- (a) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in United States dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm of independent public accountants, to pay the principal of, or interest and premium, if any, on the outstanding Notes on the Stated Maturity or on the applicable Redemption Date, as the case may be, and the Company must specify whether the Notes are being defeased to maturity or to a particular Redemption Date;
- (b) in the case of an election under Section 8.02 hereof, the Company will have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming 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 this Supplemental Indenture, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;
- (c) in the case of an election under Section 8.03 hereof, the Company will have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (d) no Default or Event of Default will have occurred and be continuing on the date of such deposit, other than a Default or Event of Default resulting from the incurrence of Indebtedness all or a portion of the proceeds of which will be used to defease the Notes pursuant to this Article 8 concurrently with such incurrence, or insofar as Sections 6.01(h) or 6.01(i) hereof is concerned, at any time in the period ending on the 91st day after the date of deposit (and any similar concurrent deposit relating to other Indebtedness), and the granting of Liens to secure such borrowings;
- (e) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Supplemental Indenture and the agreements governing any other Indebtedness being defeased, discharged or replaced) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;
- (f) the Company will have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Notes over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others; and
- (g) the Company will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

**Section 8.05** *Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Supplemental Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

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The Company and the Guarantors will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

**Section 8.06** *Repayment to Company.*

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable will be paid to the Company on its request or (if then held by the Company) will be discharged from such trust; and the Holder of such Note will thereafter look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the reasonable expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

**Section 8.07** *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Supplemental Indenture and the Notes will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided, however*, that, if the Company makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

**Section 9.01** *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Supplemental Indenture, the Company, the Guarantors and the Trustee may amend or supplement this Supplemental Indenture, the Guarantees or the Notes without the consent of any Holder of a Note:

- (a) to cure any ambiguity, defect or inconsistency;
  - (b) to provide for uncertificated Notes in addition to or in place of certificated Notes;
  - (c) to provide for the assumption of the Company's obligations to the Holders of the Notes in the case of merger or consolidation or sale of all or substantially all of the Company's assets;
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- (d) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights under this Supplemental Indenture of any Holder of the Notes;
  - (e) to comply with requirements of the SEC in order to effect or maintain the qualification of this Supplemental Indenture under the TIA;
  - (f) to provide for the issuance of Additional Notes in accordance with this Supplemental Indenture;
  - (g) to conform the text of this Supplemental Indenture, the Notes or the Guarantees to any provision of the Description of Notes to the extent that such provision in the Description of Notes was intended to be a verbatim recitation of a provision of this Supplemental Indenture, the Notes or the Guarantees;
  - (h) to allow any Guarantor to execute a supplemental indenture and/or a Guarantee with respect to the Notes;
  - (i) to evidence and provide for the acceptance of appointment by a successor trustee;
  - (j) to add guarantees with respect to the Notes;
  - (k) to secure the Notes; or
  - (l) to release any Lien granted in favor of the Holders of the Notes pursuant to Section 4.09 hereof upon release of the Lien securing the underlying obligation that gave rise to such Lien.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Supplemental Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Supplemental Indenture or otherwise.

**Section 9.02** *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, the Company, the Guarantors and the Trustee may amend or supplement this Supplemental Indenture (including Sections 3.09, 4.10 and 4.15 hereof), the Guarantees and the Notes with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes, and, subject to Sections 6.04 and 6.07 hereof) and any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Supplemental Indenture, the Guarantees or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 hereof will determine which Notes are considered to be "outstanding" for purposes of this Section 9.02.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Supplemental Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture.

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It will not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it will be sufficient if such consent approves the substance of the proposed amendment or waiver.

After an amendment, supplement or waiver under this Section becomes effective, the Company will mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Supplemental Indenture or the Notes. However, without the consent of each Holder of Notes affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

- (a) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;
- (b) reduce the principal of or change the fixed maturity of any Note or alter or waive any of the provisions with respect to the redemption of the Notes except as provided above with respect to Sections 3.09, 4.10 and 4.15 hereof;
- (c) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(d) waive a Default or Event of Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration:

(e) make any Note payable in money other than that stated in the Notes;

(f) make any change in the provisions of this Supplemental Indenture relating to waivers of past Defaults or the rights of Holders of the Notes to receive payments of principal of or premium, interest on the Notes;

(g) make any change in the foregoing amendment and waiver provisions; or

(h) release any Guarantor from any of its Obligations under its Guarantee or this Supplemental Indenture, except in accordance with the terms of this Supplemental Indenture.

**Section 9.03** *Compliance With Trust Indenture Act.*

Every amendment or supplement to this Supplemental Indenture or the Notes will be set forth in a amended or supplemental indenture that complies with the TIA as then in effect.

**Section 9.04** *Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

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**Section 9.05** *Notation on or Exchange of Notes.*

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee will, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

**Section 9.06** *Trustee to Sign Amendments, Etc.*

The Trustee will sign any amended, restated or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amendment or supplemental indenture until the Board of Directors approves it. In executing any amended, restated or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended, restated or supplemental indenture is authorized or permitted by this Supplemental Indenture.

**ARTICLE 10.**  
**NOTE GUARANTEES**

**Section 10.01** *Guarantee.*

Subject to this Article 10, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Supplemental Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (a) the principal of and interest on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder will be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Supplemental Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Supplemental Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, Trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each

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Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such

obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

**Section 10.02** *Limitation on Guarantor Liability.*

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor under its Guarantee and this Article 10 will be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent transfer or conveyance.

**Section 10.03** *Execution and Delivery of Guarantee.*

To evidence its Guarantee set forth in Section 10.01, each Guarantor hereby agrees that a notation of such Guarantee substantially in the form included in Exhibit C will be endorsed by an Officer of such Guarantor on each Note authenticated and delivered by the Trustee and that this Supplemental Indenture will be executed on behalf of such Guarantor by an Officer.

Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Guarantee.

If an Officer whose signature is on this Supplemental Indenture or on the Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Guarantee is endorsed, the Guarantee will be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Guarantee set forth in this Supplemental Indenture on behalf of the Guarantors.

In the event that the Company creates or acquires any new Subsidiaries subsequent to the date of this Supplemental Indenture, if required by Section 4.16 hereof, the Company will cause such Subsidiaries to execute supplemental indentures to this Supplemental Indenture and Guarantees in accordance with Section 4.16 hereof and this Article 10, to the extent applicable.

**Section 10.04** *Guarantors May Consolidate, etc. on Certain Terms.*

A Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into, whether or not such Guarantor is the surviving Person, another Person other than the Company or another Guarantor, unless:

- (a) immediately after giving effect to such transaction, no Default or Event of Default exists; and
- (b) either:

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(1) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger, if other than the Guarantor or the Company, unconditionally assumes all the obligations of such Guarantor under this Supplemental Indenture and its Guarantee pursuant to a supplemental indenture in the form of Exhibit C hereto; or

- (2) such sale or other disposition does not violate the applicable provisions of this Supplemental Indenture.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in the form of Exhibit C to the Trustee, of the Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Supplemental Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Guarantees to be endorsed upon all of the Notes issuable hereunder. All the Guarantees so issued will in all respects have the same legal rank and benefit under this Supplemental Indenture as the Guarantees theretofore and thereafter issued in accordance with the terms of this Supplemental Indenture as though all of such Guarantees had been issued at the date of the execution hereof.

Except as set forth in Article 5 hereof, and notwithstanding clauses (a) and (b) above, nothing contained in this Supplemental Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor. Upon any such consolidation or merger of any Guarantor with or into another Guarantor or with or into the Company, the Guarantee of the Guarantor that does not survive will no longer be of any force or effect.

**Section 10.05** *Releases Following Sale of Assets, Etc..*

In the event of (a) any sale or other disposition of all or substantially all of the assets of any Guarantor, including by way of merger, consolidation or otherwise, to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company, if the sale or other disposition does not violate Section 4.10 herein; (b) any sale or other disposition of all of the Capital Stock of a Guarantor, including by way of dividend of the Capital Stock of such Guarantor to the stockholders of the Company, to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company if the sale or other disposition does not violate Section 4.07 or Section 4.10 herein; (c) if the Company designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with Section 4.19 of this Supplemental Indenture; (d) upon legal defeasance, covenant defeasance or satisfaction and discharge of this Indenture as provided in Article 8 and Article 11; or (e) upon release of such Guarantor's Guarantee of all other Indebtedness of the Company, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the capital stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Guarantee; *provided* that the such sale or other disposition does not violate the applicable provisions of this Supplemental Indenture, including without limitation Section 4.10 hereof. Upon delivery by the Company to the Trustee of 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 applicable provisions of this Supplemental Indenture, including without limitation Section 4.10 hereof, the Trustee will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Guarantee.

Any Guarantor not released from its obligations under its Guarantee will remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Supplemental Indenture as provided in this Article 10.



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**ARTICLE 11.**  
**SATISFACTION AND DISCHARGE**

**Section 11.01**    *Satisfaction and Discharge.*

This Supplemental Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1)        either:

          (a)        all Notes that have been authenticated (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company) have been delivered to the Trustee for cancellation; or

          (b)        all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium and accrued interest to the date of maturity or redemption;

(2)        no Default or Event of Default has occurred and is continuing on the date of such deposit or will occur as a result of such deposit and such 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;

(3)        the Company or any Guarantor has paid or caused to be paid all sums payable by it under this Supplemental Indenture; and

(4)        the Company has delivered irrevocable instructions to the Trustee under this Supplemental Indenture to apply the deposited money toward the payment of the Notes at maturity or the Redemption Date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

**ARTICLE 12.**  
**MISCELLANEOUS**

**Section 12.01**    *Trust Indenture Act Controls.*

If any provision of this Supplemental Indenture limits, qualifies or conflicts with the duties imposed by TIA Section 318(c), the imposed duties will control.

**Section 12.02**    *Notices.*

Any notice or communication by the Company, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telecopier or overnight air courier guaranteeing next day delivery, to the others' address.

If to the Company and/or any Guarantor:

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Ball Corporation  
10 Longs Peak Drive  
Broomfield, Colorado 80021-2510  
Telecopier No.: (303) 460-2691  
Attention: Treasurer

With a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
Telecopier No.: (312) 407-0411  
Attention: Charles W. Mulaney, Jr., Esq.

If to the Trustee:

The Bank of New York Mellon Trust Company, N.A.  
700 S. Flower Street, Suite 500  
Los Angeles, CA 90017  
Telecopier No.: (213) 630-6298  
Attention: Corporate Trust Administration

The Company, any Guarantor or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will be mailed by first class mail postage prepaid, certified or registered mail, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication will also be so mailed to any Person described in TIA Section 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

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**Section 12.03**    *Communication by Holders of Notes with Other Holders of Notes.*

Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Supplemental Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else will have the protection of TIA Section 312(c).

**Section 12.04**    *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Company to the Trustee to take any action under this Supplemental Indenture, the Company will furnish to the Trustee:

- (a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which will include the statements set forth in Section 12.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Supplemental Indenture relating to the proposed action have been satisfied; and
- (b) except with respect to the initial issuance of the Notes, an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which will include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

**Section 12.05**    *Statements Required in Certificate and Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Supplemental Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) will comply with the provisions of TIA Section 314(e) and will include:

- (a) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and
- (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

**Section 12.06**    *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

**Section 12.07**    *Calculation of Foreign Currency Amounts.*

The calculation of the U.S. dollar equivalent amount for any amount denominated in a foreign currency will be the noon buying rate in the City of New York as certified by the Federal Reserve Bank of New York on the date on which such determination is required to be made or, if such day is not a day on which such rate is published, the rate most recently published prior to such day.

**Section 12.08**    *No Personal Liability of Directors, Officers, Employees and Stockholders.*

No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or such Guarantor under the Notes, the Guarantees, this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such

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obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes and the Guarantees. The waiver may not be effective to waive liabilities under the federal securities laws.

**Section 12.09**    *Governing Law; Waiver of Jury Trial.*

THE INTERNAL LAWS OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE, THE NOTES AND THE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

**Section 12.10**    *Force Majeure.*

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**Section 12.11**    *No Adverse Interpretation of Other Agreements.*

This Supplemental Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Supplemental Indenture.

**Section 12.12**    *Successors.*

All agreements of the Company in this Supplemental Indenture and the Notes will bind its successors. All agreements of the Trustee in this Supplemental Indenture will bind its successors.

**Section 12.13**    *Severability.*

In case any provision in this Supplemental Indenture or in the Notes will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

**Section 12.14**    *Counterpart Originals.*

The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together represent the same agreement.

**Section 12.15**    *Table of Contents, Headings, Etc.*

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of this Supplemental Indenture and will in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following page]



**SIGNATURES**

Dated as of November 18, 2010

Ball Corporation

By:    /s/ Charles E. Baker  
Name: Charles E. Baker  
Title: Vice President, General Counsel and Assistant Corporate Secretary

Ball Aerosol and Specialty Container Holding Corporation  
Ball Aerosol and Specialty Container Inc.  
Ball Metal Beverage Container Corp.  
Ball Metal Food Container Corp.  
Ball Metal Packaging Sales Corp.  
Ball Packaging Corp.  
Ball Plastic Container Corp.  
BG Holdings I, Inc.  
BG Holdings II, Inc.  
Latas de Aluminio Ball, Inc.  
USC May Verpackungen Holding Inc.  
Ball Corporation, a Nevada corporation  
Ball Glass Container Corporation  
Ball Glass Containers, Inc.  
Ball Metal Container Corporation  
Ball Aerospace & Technologies Corp.  
Ball Technologies Holdings Corp.  
Efratom Holding, Inc.  
Ball Holdings Corp.  
Ball Delaware Holdings, LLC  
Ball Asia Services Limited  
Ball Metal Food Container, LLC  
Ball Pan-European Holdings, Inc.  
Metal Packaging International, Inc.  
Ball Container LLC  
Ball Holdings LLC

By:    /s/ Charles E. Baker

Name: Charles E. Baker  
Title: Authorized Signatory

The Bank of New York Mellon Trust Company, N.A.,  
as Trustee

By: /s/ Alex Briffett  
Name: John A. (Alex) Briffett  
Title: Authorized Signatory

EXHIBIT A

[FACE OF NOTE]

[INSERT THE GLOBAL NOTE LEGEND, IF APPLICABLE PURSUANT TO THE PROVISIONS OF THE SUPPLEMENTAL INDENTURE]

**5.75% SENIOR NOTES DUE 2021**

ISIN No.:  
CUSIP No.: \$

**BALL CORPORATION**

promises to pay to CEDE & CO. or registered assigns, the principal sum of \$ on May 15, 2021.

Interest Payment Dates: May 15<sup>th</sup> and November 15<sup>th</sup>

Record Dates: May 1<sup>st</sup> and November 1<sup>st</sup>

Dated: November 18, 2010

BALL CORPORATION

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

Date of Authentication: November 18, 2010

This is one of the Global Notes  
referred to in the within-  
mentioned Supplemental Indenture:

Dated: November 18, 2010

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

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

[Back of Note]

**5.75% Senior Notes due 2021**

Capitalized terms used herein have the meanings assigned to them in the Supplemental Indenture referred to below unless otherwise indicated.

1. *INTEREST.* Ball Corporation, an Indiana corporation (the “*Company*”), promises to pay interest on the principal amount of this Note at 5.75% per annum from the date hereof until maturity. The Company will pay interest semi-annually on May 15<sup>th</sup> and November 15<sup>th</sup> of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each an “*Interest Payment Date*”). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest will accrue from such next succeeding Interest Payment Date; *provided, further*, that the first Interest Payment Date will be May 15, 2011. The Company will pay interest (including post-petition interest in

any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. **METHOD OF PAYMENT.** The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the May 1 or November 1 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Supplemental Indenture with respect to defaulted interest. Principal, premium, if any, and interest on the Notes will be payable at the office or agency of the Paying Agent and Registrar within the City and State of New York or, at the option of the Company, payment of interest may be made by check mailed to the Holders of the Notes at their respective addresses set forth in the register of Holders of Notes; *provided* that all payments of principal, premium and interest with respect to Notes the Holders of which have given wire transfer instructions to the Trustee will be required to be made by wire transfer of immediately available funds to the accounts specified by the Holders thereof. Such payment will be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. **PAYING AGENT AND REGISTRAR.** Initially, The Bank of New York Mellon Trust Company, N.A., the Trustee under the Supplemental Indenture, will act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. **INDENTURE.** This Note is one of a duly authenticated series of securities of the Company issued and to be issued in one or more series under an indenture (the “*Base Indenture*”), dated as of March 27, 2006, between the Company and the Trustee, as amended by the Fifth Supplemental Indenture (the “*Supplemental Indenture*” and, together with the Base Indenture, the “*Indenture*”), dated as of November 18, 2010, among the Company, the Guarantors and the Trustee. The terms of the Notes include those stated in the Supplemental Indenture and those made part of the Supplemental Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code Sections 77aaa-77bbb). The Notes are subject to all such terms, and Holders are referred to the Supplemental Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Base Indenture, the provisions of this Note will govern and be controlling, and to the extent any provision of this Note conflicts with the express provisions of the Supplemental Indenture, the provisions

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of the Supplemental Indenture will govern and be controlling. The Company will be entitled to issue Additional Notes pursuant to Section 2.14 of the Supplemental Indenture.

5. **OPTIONAL REDEMPTION.**

(a) Except as set forth in subparagraph (b) and (c) of this Paragraph 5, the Company will not have the option to redeem the Notes prior to November 15, 2015. Thereafter, the Company will have the option to redeem all or a part of the Notes, upon not less than 30 nor more than 60 days’ notice, at the redemption prices, expressed as percentages of principal amount, set forth below, plus accrued and unpaid interest on the Notes redeemed to the applicable Redemption Date, if redeemed during the twelve-month period beginning on November 15 of the years indicated below:

Year	Percentage
2015	102.875%
2016	101.917%
2017	100.958%
2018 and thereafter	100.000%

(b) Notwithstanding the provisions of subparagraph (a) of this Paragraph 5, at any time prior to November 15, 2013, the Company may on any one or more occasions redeem, in whole or in part, up to 35% of the aggregate principal amount of Notes, including Additional Notes of the same class, if any, issued under the Supplemental Indenture, at a redemption price of par plus the stated interest rate, or 105.75% of the principal amount of the Notes redeemed, plus accrued and unpaid interest thereon to the Redemption Date with the net cash proceeds of one or more Equity Offerings; *provided* that at least 65% of the aggregate principal amount of the Notes, including Additional Notes of the same class, if any, issued under the Supplemental Indenture, remains outstanding immediately after the occurrence of such redemption, excluding Notes held by the Company and its Subsidiaries; and the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(c) At any time prior to November 15, 2015, the Company, at its option, may redeem all or a part of the notes, upon not less than 30 nor more than 60 days’ prior notice, at a redemption price equal to 100% of the principal amount of notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to the date of redemption, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date.

6. **MANDATORY REDEMPTION.** The Company is not required to make mandatory redemption payments with respect to the Notes.

7. **REPURCHASE AT OPTION OF HOLDER.**

(a) If a Change of Control occurs, and the Company does not redeem the Notes as described under clause (5) above within 60 days after the Change of Control, the Company will be required to make an offer (a “*Change of Control Offer*”) to repurchase all or any part, equal to \$2,000 or an integral multiple of \$1,000 in excess thereof, of each Holder’s Notes at a purchase price in cash equal to 101% of the aggregate principal amount of the Notes repurchased plus accrued and unpaid interest on the Notes repurchased to the date of purchase (the “*Change of Control Payment*”). Within 30 days following any Change of Control or, at the Company’s option, prior to the consummation of such Change of Control but after the public announcement thereof, the Company will mail a notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Supplemental Indenture.

(b) If the Company or a Restricted Subsidiary consummates any Asset Sales and the aggregate amount of Excess Proceeds exceeds \$50.0 million, the Company will commence an offer to all Holders of Notes and all holders of other Indebtedness that is *pari passu* with the Notes containing provisions similar to those set forth in the Supplemental Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets to purchase the maximum principal amount of Notes and such

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other *pari passu* Indebtedness that may be purchased out of the Excess Proceeds (an “*Asset Sale Offer*”) pursuant to Section 3.09 of the Supplemental Indenture at an offer price in cash in an amount equal to 100% of the principal amount plus accrued and unpaid interest to the date of purchase and will be payable in cash. To the extent that the aggregate amount of Notes and other *pari passu* Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company

(or such Subsidiary) may use those Excess Proceeds for any purpose not otherwise prohibited by the Supplemental Indenture. If the aggregate principal amount of Notes and other *pari passu* Indebtedness surrendered by Holders thereof exceeds the amount of Excess Proceeds, the Trustee will select the Notes and other *pari passu* Indebtedness to be purchased on a *pro rata* basis. Holders of Notes that are the subject of an offer to purchase will receive an Asset Sale Offer from the Company prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled “Option of Holder to Elect Purchase” on the reverse of the Notes.

8. **NOTICE OF REDEMPTION.** Notice of redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$2,000 may be redeemed in part but only in whole multiples of \$1,000 in excess thereof, unless all of the Notes held by a Holder are to be redeemed. On and after the Redemption Date interest ceases to accrue on Notes or portions thereof called for redemption.

9. **DENOMINATIONS, TRANSFER, EXCHANGE.** The Notes are in registered form without coupons in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. Notes may be transferred or exchanged as provided in the Supplemental Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Supplemental Indenture. The Company need not exchange or transfer any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

10. **PERSONS DEEMED OWNERS.** The registered Holder of a Note may be treated as its owner for all purposes.

11. **AMENDMENT, SUPPLEMENT AND WAIVER.** The Base Indenture may be amended as provided therein. Subject to certain exceptions, the Supplemental Indenture, the Guarantees or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes, voting as a single class, and any existing default or compliance with any provision of the Supplemental Indenture, the Guarantees or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes, including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes, voting as a single class. Without the consent of any Holder of a Note, the Supplemental Indenture, the Guarantees or the Notes may be amended or supplemented (i) to cure any ambiguity, defect or inconsistency; (ii) to provide for uncertificated Notes in addition to or in place of certificated Notes; (iii) to provide for the assumption of the Company’s obligations to Holders of the Notes in case of a merger or consolidation or sale of all or substantially all of the Company’s assets (iv) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights under the Supplemental Indenture of any such Holder; (v) to comply with the requirements of the SEC in order to effect or maintain the qualification of the Supplemental Indenture under the Trust Indenture Act; (vi) to provide for the issuance of Additional Notes in accordance with the Supplemental Indenture; (vii) to conform to the text of the Supplemental Indenture, the Notes or the Guarantees to any provision of the Description of Notes to the extent that such provision in the Description of Notes was intended to be a verbatim recitation of a provision of the Supplemental Indenture, the Notes or the Guarantees; (viii) to allow any Guarantor to execute a supplemental indenture to the Supplemental Indenture and/or a Guarantee with respect to the Notes; (ix) to evidence and provide for the acceptance of appointment by a successor trustee; (x) to add Guarantees with respect to the Notes; (xi) to secure the Notes; or (xii) to release any Lien granted in favor of the Holders of the Notes pursuant to

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Section 4.09 of the Supplemental Indenture upon release of the Lien securing the underlying obligation that gave rise to such Lien.

12. **DEFAULTS AND REMEDIES.** Each of the following is an “*EVENT OF DEFAULT*”: (i) default for a period of 30 days in the payment when due of interest on the Notes; (ii) default in the payment when due of principal of or premium, if any, on the Notes; (iii) the Company or any of its Restricted Subsidiaries fails to comply with the provisions of Section 5.01 of the Supplemental Indenture; (iv) the Company or any of its Restricted Subsidiaries fails for 30 days after notice to the Company to comply with any of the provisions of Sections 4.07, 4.09, 4.10 or 4.15 of the Supplemental Indenture; (v) the Company or any of its Restricted Subsidiaries fails for 60 days after notice to comply with any of the other agreements in the Supplemental Indenture or the Notes; (vi) the Company or any of its Restricted Subsidiaries (other than a Securitization Entity) defaults under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (other than a Securitization Entity) (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries (other than a Securitization Entity)) whether such Indebtedness or guarantee now exists, or is created after the date of this Supplemental Indenture, if that default (a) is caused by a failure to pay principal of or premium, if any, or interest on such Indebtedness on or before the expiration of the grace period provided in such Indebtedness on the date of such default (a “*Payment Default*”) or (b) results in the acceleration of such Indebtedness prior to its express maturity and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$50.0 million or more or its foreign currency equivalent; (vii) the Company or any of its Restricted Subsidiaries fails to pay final judgments aggregating in excess of \$50.0 million or its foreign currency equivalent, excluding amounts covered by insurance, which judgments are not paid, discharged or stayed for a period of 60 days; (viii) certain events of bankruptcy or insolvency occur with respect to the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law; or (ix) except as permitted by the Supplemental Indenture, any Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under such Guarantor’s Guarantee.

If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Company or any Restricted Subsidiary of the Company that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law, all outstanding Notes will become due and payable without further action or notice. Holders may not enforce the Supplemental Indenture or the Notes except as provided in the Supplemental Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal or interest. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under the Supplemental Indenture except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Supplemental Indenture, and the Company is required upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

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13. **TRUSTEE DEALINGS WITH COMPANY.** The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

14. *NO RECOURSE AGAINST OTHERS.* A director, officer, employee, incorporator or stockholder, of the Company or any Guarantor, as such, will not have any liability for any obligations of the Company or the Guarantors under the Notes, the Guarantees or the Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

15. *AUTHENTICATION.* This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

16. *ABBREVIATIONS.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

17. *CUSIP NUMBERS.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon. The Company will furnish to any Holder upon written request and without charge a copy of the Base Indenture, the Supplemental Indenture and the Guarantees. Requests may be made to:

Ball Corporation  
10 Longs Peak Drive  
Broomfield, Colorado 80021-2510  
Telecopier No.: (303) 460-2691  
Attention: Chief Financial Officer

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### ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: \_\_\_\_\_

(Insert assignee's legal name)

\_\_\_\_\_  
(Insert assignee's soc. sec. or tax I.D. no.)

\_\_\_\_\_  
(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_  
to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_  
(sign exactly as your name appears on the face of this senior note)

Tax Identification No: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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### Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Company pursuant to Section 4.10 or 4.15 of the Supplemental Indenture, check the box below:

☐ Section 4.10

☐ Section 4.15

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.10 or Section 4.15 of the Supplemental Indenture, state the amount you elect to have purchased: \$

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_  
(sign exactly as your name appears on the face of this senior note)

Tax Identification No: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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## EXHIBIT B

### FORM OF NOTATION OF GUARANTEE

For value received, each Guarantor (which term includes any successor Person under the Supplemental Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Supplemental Indenture and subject to the provisions in the indenture (the “*Base Indenture*”), dated as of March 27, 2006, between Ball Corporation, (the “*Company*”) and The Bank of New York Mellon Trust Company, N.A. (f/k/a The Bank of New York Trust Company, N.A.), as trustee (the “*Trustee*”), as amended by the Fifth Supplemental Indenture (the “*Fifth Supplemental Indenture*” and, together with the Base Indenture, the “*Indenture*”), dated as of November 18, 2010, among the Company, the Guarantors named on the signature pages thereto and the Trustee, (a) the due and punctual payment of the principal of, premium, if any, and interest on the Notes (as defined in the Fifth Supplemental Indenture), whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal and premium, and, to the extent permitted by law, interest, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms of the Fifth Supplemental Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Notes and to the Trustee pursuant to the Guarantee and the Fifth Supplemental Indenture are expressly set forth in Article 10 of the Fifth Supplemental Indenture and reference is hereby made to the Fifth Supplemental Indenture for the precise terms of the Guarantee. Each Holder of a Note, by accepting the same, agrees to and will be bound by such provisions and appoints the Trustee attorney-in-fact of such Holder for such purpose.

[Name of Guarantor(s)]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## EXHIBIT C

### FORM OF SUPPLEMENTAL INDENTURE TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this “*Supplemental Indenture*”), dated as of \_\_\_\_\_, 20\_\_\_\_, among \_\_\_\_\_ (the “*Guaranteeing Subsidiary*”), a subsidiary of Ball Corporation (or its permitted successor), an Indiana corporation (the “*Company*”), the Company, the other Guarantors (as defined in the Fifth Supplemental Indenture referred to herein) and The Bank of New York Mellon Trust Company, N.A., as trustee under the Fifth Supplemental Indenture referred to below (the “*Trustee*”).

### WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the “*Base Indenture*”), dated as of March 27, 2006, between the Company and the Trustee, as amended by a Fifth Supplemental Indenture (the “*Fifth Supplemental Indenture*” and, together with the Base Indenture, the “*Indenture*”), dated as of November 18, 2010, among the Company, the Guarantors named therein and the Trustee, providing for the original issuance of an aggregate principal amount of \$500.0 million of 5.75% Senior Notes due 2021 (the “*Notes*”);

WHEREAS, the Fifth Supplemental Indenture provides that under certain circumstances the Guaranteeing Subsidiary will execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary will unconditionally guarantee all of the Company’s Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the “*Note Guarantee*”); and

WHEREAS, pursuant to Section 9.01 of the Fifth Supplemental Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. *Capitalized Terms.* Capitalized terms used herein without definition will have the meanings assigned to them in the Fifth Supplemental Indenture.

2. *Agreement to Guarantee.* The Guaranteeing Subsidiary hereby agrees as follows:

(a) Along with all Guarantors named in the Fifth Supplemental Indenture, to jointly and severally Guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, the Notes or the obligations of the Company hereunder or thereunder, that:

(i) the principal of, and premium, if any, and interest on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so

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guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately.



(b) The obligations hereunder will be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Fifth Supplemental Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever.

(d) This Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and the Fifth Supplemental Indenture, and the Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Fifth Supplemental Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors, or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(f) The Guaranteeing Subsidiary will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Fifth Supplemental Indenture for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Fifth Supplemental Indenture, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee.

(h) The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

(i) Pursuant to Section 10.02 of the Fifth Supplemental Indenture, after giving effect to any maximum amount and all other contingent and fixed liabilities that are relevant under any applicable Bankruptcy or fraudulent conveyance laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under Article 10 of the Fifth Supplemental Indenture, this new Note Guarantee will be limited to the maximum amount permissible such that the obligations of such Guarantor under this Note Guarantee will not constitute a fraudulent transfer or conveyance.

3. *Execution and Delivery.* Each Guaranteeing Subsidiary agrees that the Note Guarantees will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

4. Guaranteeing Subsidiary may Consolidate, etc. on Certain Terms.

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(a) The Guaranteeing Subsidiary may not sell or otherwise dispose of all substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company or another Guarantor unless:

(i) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(ii) either (A) subject to Sections 10.04 and 10.05 of the Fifth Supplemental Indenture, the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger unconditionally assumes all the obligations of that Guarantor, pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee, under the Notes, the Fifth Supplemental Indenture and the Note Guarantee on the terms set forth herein or therein; or (B) such sale or other disposition does not violate the applicable provisions of the Fifth Supplemental Indenture, including without limitation, Section 4.10 thereof.

(b) In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of the Fifth Supplemental Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable under the Fifth Supplemental Indenture which theretofore will not have been signed by the Company and delivered to the Trustee. All the Note Guarantees so issued will in all respects have the same legal rank and benefit under the Fifth Supplemental Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of the Fifth Supplemental Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

(c) Except as set forth in Articles 4 and 5 and Section 10.05 of Article 10 of the Fifth Supplemental Indenture, and notwithstanding clauses (a) and (b) above, nothing contained in the Fifth Supplemental Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

5. Releases.

(a) In the event of any sale or other disposition of all or substantially all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all of the capital stock of any Guarantor, in each case to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the capital stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Note Guarantee; *provided* that such sale or other disposition does not violate the applicable provisions of the Supplemental Indenture, including without limitation Section 4.10 of the Fifth Supplemental Indenture. Upon delivery by the Company to the Trustee of 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 Fifth Supplemental Indenture, including without limitation Section 4.10 of the Fifth Supplemental Indenture, the Trustee will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

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(b) Any Guarantor not released from its obligations under its Note Guarantee will remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under the Fifth Supplemental Indenture as provided in Article 10 of the Fifth Supplemental Indenture.

6. *No Recourse Against Others.* No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary, as such, will have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Notes, any Note Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

7. *New York Law to Govern.* **THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.**

8. *Counterparts.* The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together represent the same agreement.

9. *Effect of Headings.* The Section headings herein are for convenience only and will not affect the construction hereof.

10. *The Trustee.* The Trustee will not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: \_\_\_\_\_, 20\_\_\_\_

[GUARANTEEING SUBSIDIARY]

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

[COMPANY]

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

[EXISTING GUARANTORS]

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

[TRUSTEE],  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

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