

**\$525,000,000**



# Cott Beverages Inc.

## % Senior Notes due 2022

### The Company:

- We are one of the world's largest producers of beverages on behalf of retailers, brand owners and distributors. Our product lines include carbonated soft drinks, 100% shelf stable juice and juice-based products, clear, still and sparkling flavored waters, energy drinks and shots, sports drinks, new age beverages and ready-to-drink teas, as well as beverage concentrates, liquid enhancers, freezables and ready-to-drink alcoholic beverages. The recent Aimia Foods Acquisition (as defined below) allowed us to further improve our product, package and channel diversification, by expanding our product line to include hot chocolate, coffee, malt drinks, creamers/whiteners and cereals, and by providing us with new packaging formats, which include pouches, jars, sticks, in-cup products, sachets and block-bottom bags.

### The Offering:

- Use of Proceeds: We intend to use the net proceeds from this offering to repurchase any and all of our outstanding 8.125% Senior Notes due 2018, to repay any outstanding loans under our asset-based lending credit facility entered into on March 31, 2008, as amended (the "ABL Facility"), to pay related fees and expenses and for general corporate purposes.
- Registration Rights: We have agreed to exchange the notes for a new issue of substantially identical registered notes under the U.S. Securities Act of 1933, as amended (the "Securities Act").

### The Senior Notes:

- Maturity: The notes will mature on \_\_\_\_\_, 2022.
- Interest Payments: The notes will pay interest semi-annually in cash in arrears on \_\_\_\_\_ and \_\_\_\_\_ of each year, beginning on \_\_\_\_\_, 2014.
- Guarantees: The notes will be initially guaranteed on a senior basis by Cott Corporation and all of our subsidiaries that guarantee indebtedness under our ABL Facility and by any wholly owned subsidiary that guarantees certain indebtedness of Cott Corporation or any of the other guarantors.
- Ranking: The notes and the guarantees will be our general unsecured senior obligations, will rank equally in right of payment with all of our existing and future unsecured senior debt and will rank senior in right of payment to all of our existing and future unsecured subordinated debt. In addition, the notes will be effectively subordinated to all of our and our guarantors' secured indebtedness to the extent of the value of the assets securing such indebtedness and effectively subordinated to the indebtedness and obligations of our subsidiaries that will not guarantee the notes.
- Optional Redemption: The notes will be redeemable at any time on or after \_\_\_\_\_, 2017 at the redemption prices specified under "Description of Notes—Optional Redemption" plus accrued and unpaid interest, if any, to the date of redemption. Prior to \_\_\_\_\_, 2017, we may redeem all or a portion of the notes at a price equal to 100% of the principal amount plus a "make-whole" premium plus accrued and unpaid interest, if any, to the date of redemption. In addition, we may redeem up to 40% of the notes before \_\_\_\_\_, 2017, with the net cash proceeds from certain equity offerings plus accrued and unpaid interest, if any, to the date of redemption.

**Investing in the notes involves risks that are described in the "Risk Factors" section beginning on page 18 of this offering memorandum.**

**Offering Price: % plus accrued interest, if any, from \_\_\_\_\_, 2014.**

The notes have not been registered under the Securities Act, or the securities laws of any other jurisdiction. Unless they are registered, the notes may be offered only in transactions that are exempt from registration under the Securities Act or the securities laws of any other jurisdiction. Accordingly, we are offering the notes in the United States only to qualified institutional buyers in compliance with Rule 144A and outside the United States to non-U.S. persons in compliance with Regulation S. For further details about eligible offerees and resale restrictions, see "Transfer Restrictions."

The notes will be ready for delivery in book-entry form only through the facilities of The Depository Trust Company for the accounts of its participants, including Euroclear Bank S.A./N.V., as operator of the Euroclear System, and Clearstream Banking, *société anonyme*, on or about \_\_\_\_\_, 2014.

*Joint Book-Running Managers*

**BofA Merrill Lynch**  
**J.P. Morgan**

**Credit Suisse**

**Deutsche Bank Securities**  
**Wells Fargo Securities**

The date of this offering memorandum is \_\_\_\_\_, 2014.

## TABLE OF CONTENTS

Summary .....	1
Risk Factors .....	18
Use of Proceeds .....	34
Capitalization .....	35
Ratio of Earnings to Fixed Charges .....	36
Description of Other Indebtedness .....	37
Description of Notes .....	39
Exchange Offer; Registration Rights .....	103
Certain United States Federal Income Tax Considerations .....	105
Plan of Distribution .....	111
Transfer Restrictions .....	115
Legal Matters .....	118
Independent Registered Certified Public Accounting Firm .....	119
Where You Can Find More Information .....	120

---

You should rely only on the information contained or incorporated by reference in this document or to which we have referred you. We and the initial purchasers have not authorized anyone to provide you with any information other than that included or incorporated by reference herein. We take no responsibility for, and can provide no assurance as to the reliability of, any information that others may give you. This document may only be used where it is legal to sell these securities.

## **Notice To Investors**

This offering memorandum is a confidential document that we are providing only to prospective buyers of the notes. You should read this offering memorandum before deciding to buy any notes. You must not:

- use this offering memorandum or any information contained in this offering memorandum for any other purpose;
- make copies of any part of this offering memorandum or give a copy of it to any other person; or
- disclose any information in this offering memorandum to any other person.

This offering memorandum does not constitute an offer to sell or a solicitation of an offer to buy any securities in any jurisdiction in which such offer or solicitation would be unlawful.

We and the initial purchasers are offering to sell the notes only to persons to whom, and in places where, offers and sales are permitted.

This offering memorandum and the documents incorporated by reference are current as of the date hereof or the date of such incorporated document. You should not assume that the information contained or incorporated by reference herein is accurate as of any date other than the date on the front cover of this offering memorandum or the date of such incorporated document.

We have prepared this offering memorandum and we are solely responsible for its contents. You are responsible for making your own examination of us and our financial condition, and your own assessment of the merits and risks of investing in the notes. You may contact us at any time if you need additional information. By purchasing any notes, you acknowledge that:

- you have reviewed this offering memorandum;
- you have had an opportunity to request from us, and to review, all additional information considered by you to be necessary to verify the accuracy of, or to supplement, the information contained in this offering memorandum;
- you have not relied on the initial purchasers or any person affiliated with the initial purchasers in connection with your investigation of the accuracy of such information or your investment decision;
- no person has been authorized to give any information or to make any representation concerning us or the notes, other than as contained or incorporated by reference in this offering memorandum; and
- the initial purchasers are not responsible for, and are not making any representation to you concerning, our future performance or the accuracy or completeness of this offering memorandum.

Neither we nor the initial purchasers are providing you with any legal, business, regulatory, accounting or tax advice in this offering memorandum. You should consult your own advisors to assist you in making your investment decision and to advise you whether you are legally permitted to purchase the notes.

You must comply with all laws and regulations that apply to you in any jurisdiction in which you buy, offer or sell any notes or possess or distribute this offering memorandum. You must also obtain, at your sole cost and expense, any required consents or approvals for the purchase, offer or sale by you of the notes under the laws and regulations that apply to you in any jurisdiction in which you buy, offer or sell any notes. Neither we nor the guarantors nor the initial purchasers are responsible for your compliance with these legal requirements.

We are making this offering of the notes in reliance upon exemptions from the registration requirements of the Securities Act. These exemptions apply to offers and sales of securities that do not involve a public offering.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The notes are subject to restrictions on transfer and resale, which are set forth under the heading “Transfer Restrictions.” By purchasing any notes, you will be deemed to have made certain acknowledgements, representations and agreements as described in that section of this offering memorandum. You may have to bear the financial risks of investing in these notes for an indefinite period of time.

The initial purchasers make no representation or warranty, express or implied, as to the accuracy or completeness of the information contained in this offering memorandum. Nothing contained in this offering memorandum is, or should be relied upon as, a promise or representation by the initial purchasers as to the past or future. The initial purchasers assume no responsibility for the accuracy or completeness of any information contained herein (financial, legal or otherwise).

We expect that delivery of the notes will be made against payment therefor on or about \_\_\_\_\_, 2014 which is \_\_\_\_\_ business days following the date of pricing of the notes (such settlement cycle being herein referred to as “T+ \_\_\_\_\_”). You should note that the trading of the notes on the date of pricing or the next succeeding business days may be affected by the T+ \_\_\_\_\_ settlement. See “Plan of Distribution.”

### **Special Note Regarding Forward-Looking Statements**

In addition to historical information, this offering memorandum and the documents incorporated by reference herein may contain information and statements relating to future events and future results. This information and these statements are “forward-looking” within the meaning of securities laws, including the “safe harbor” provisions of the Securities Act (Ontario), the United States Private Securities Litigation Reform Act of 1995, Section 21E of the Securities Exchange Act of 1934, as amended, or the “Exchange Act,” and Section 27A of the Securities Act and involve known and unknown risks, uncertainties, future expectations and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such statements include, but are not limited to, statements that relate to projections of sales, earnings, earnings per share, cash flows, capital expenditures or other financial items, discussions of estimated future revenue enhancements and cost savings. These statements also relate to our business strategy, goals and expectations concerning our market position, future operations, margins, profitability, liquidity and capital resources. Generally, words such as “anticipate,” “believe,” “continue,” “could,” “endeavor,” “estimate,” “expect,” “intend,” “may,” “will,” “plan,” “predict,” “project,” “should” and similar terms and phrases are used to identify forward-looking statements in this offering memorandum and in the documents incorporated by reference herein. These forward-looking statements reflect current expectations regarding future events and operating performance and are made only as of the date of this offering memorandum.

The forward-looking statements are not guarantees of future performance or events and, by their nature, are based on certain estimates and assumptions regarding interest and foreign exchange rates, expected growth, results of operations, performance, business prospects and opportunities and effective income tax rates, which are subject to inherent risks and uncertainties. Material factors or assumptions that were applied in drawing a conclusion or making an estimate set out in forward-looking statements may include, but are not limited to, assumptions regarding management’s current plans and estimates, our ability to remain a low cost supplier, and effective management of commodity costs. Although we believe the assumptions underlying these forward-looking statements are reasonable, any of these assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions could prove to be incorrect. Our operations involve risks and uncertainties, many of which are outside of our control, and any one or any combination of these risks and uncertainties could also affect whether the forward-looking statements ultimately prove to be correct. These risks and uncertainties include, but are not limited to, those described in the section entitled “Risk Factors.”

We caution the reader that the risk factors described in the section entitled “Risk Factors” may not be exhaustive. We operate in a continually changing business environment, and new risk factors emerge from time to time. Management cannot predict such new risk factors, nor can it assess the impact, if any, of such new risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those projected in any forward-looking statements. We undertake no obligation to update or revise these forward-looking statements, whether as a result of changes in underlying factors, new information, future events or otherwise, except as required by law. Undue reliance should not be placed on forward-looking statements.

#### **NOTICE TO NEW HAMPSHIRE RESIDENTS**

**NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B (“CHAPTER 421-B”) OF THE NEW HAMPSHIRE REVISED STATUTES WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE THAT ANY DOCUMENT FILED UNDER CHAPTER 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.**

#### **Securities and Exchange Commission Review**

The information in this offering memorandum relates to an offering that is exempt from registration under the Securities Act. We will agree to file one or more registration statements with the Securities and Exchange Commission, or the “SEC,” with respect to (1) a registered offer to exchange the notes for new exchange notes having terms substantially identical in all material respects to the notes exchanged therefor (except that the new exchange notes will not contain terms with respect to additional interest or transfer restrictions) or (2) resales of the notes. See “Exchange Offer; Registration Rights.” In the course of the review by the SEC of any such registration statement and other filings we may make with the SEC, we may be required or may elect to make changes to the description of our business, financial statements and other information in those documents and filings. We believe that our financial statements and other financial data included or incorporated by reference herein have been prepared in a manner that complies, in all material respects, with the regulations published by the SEC and are consistent with current practice, with the exception of the presentation of our EBITDA and Adjusted EBITDA. Comments by the SEC on our financial data in a registration statement for an exchange offer required by the registration rights agreement may require modification or reformulation of the data we present in this offering memorandum, including the financial statements and other financial information. For example, while we believe that certain of the historical financial data included in this offering memorandum has been prepared in a manner that complies with published SEC regulations and is consistent with current practice, we could be required by the SEC to modify or reformulate such presentations. In addition, such registration statement will include historical financial statements and pro forma financial information related to the Aimia Foods Acquisition (as defined below), which is omitted from this offering memorandum. Any such modification or reformulation, whether in the pro forma data or otherwise, may be significant.

## Non-GAAP Financial Measures

This offering memorandum and the documents incorporated herein contain “non-GAAP financial measures,” that is, financial measures that either exclude or include amounts that are not excluded or included in the most directly comparable measures calculated and presented in accordance with generally accepted accounting principles, or “GAAP.” Specifically, we make use of the non-GAAP measures “EBITDA,” “Adjusted EBITDA,” “adjusted net income” and “free cash flow.”

We define EBITDA as earnings before interest expense, income taxes, non-controlling interests, depreciation and amortization. We define Adjusted EBITDA as EBITDA adjusted for items which are not considered by management to be indicative of the underlying results. We define adjusted net income as GAAP earnings (loss) excluding purchase accounting adjustments, integration expenses, restructuring expenses and asset impairments. We define free cash flow as net cash provided by operating activities determined in accordance with GAAP excluding capital expenditures.

Management understands that some industry analysts and investors consider EBITDA, Adjusted EBITDA, adjusted net income and free cash flow as supplementary non-GAAP financial measures useful in analyzing a company’s performance. EBITDA, Adjusted EBITDA, adjusted net income and free cash flow, however, are not measures of financial performance under GAAP and should not be considered as alternatives to, or more meaningful than, net income as a measure of operating performance or to cash flows from operating, investing or financing activities as measures of liquidity on an actual or pro forma basis. Since EBITDA, Adjusted EBITDA, adjusted net income and free cash flow are not measures determined in accordance with GAAP and are thus susceptible to varying interpretations and calculations, EBITDA, Adjusted EBITDA, adjusted net income and free cash flow may not be comparable to other similarly titled measures of other companies. EBITDA, Adjusted EBITDA, adjusted net income and free cash flow do not represent an amount of funds that is available for management’s discretionary use. Adjusted EBITDA, as defined above, is included because management believes it is pertinent to the daily management of operations, and management uses this financial measure to evaluate the impact of operational business decisions.

Each of EBITDA, Adjusted EBITDA, adjusted net income and free cash flow has limitations as an analytical tool, and you should not consider these measures in isolation from, or as a substitute for analysis of, our financial information reported under GAAP. Some of these limitations are:

- they do not reflect cash outlays for capital expenditures or future contractual commitments;
- they do not reflect changes in, or cash requirements for, working capital;
- they do not reflect interest expense, or the cash requirements necessary to service interest, or principal payments, on indebtedness;
- they do not reflect income tax expense or the cash necessary to pay income taxes;
- they do not reflect available liquidity to our company; and
- other companies, including other companies in our industry, may not use such measures or may calculate such measures differently than as presented in this offering memorandum, limiting their usefulness as comparative measures.

Because of these limitations, none of EBITDA, Adjusted EBITDA, adjusted net income and free cash flow or any related ratio using such measures should be considered as a measure of discretionary cash available to invest in business growth or reduce indebtedness.



Certain adjustments to EBITDA, Adjusted EBITDA, adjusted net income and free cash flow are not in accordance with regulations adopted by the SEC that apply to registration statements filed under the Securities Act and periodic reports filed under the Exchange Act, with respect to the use and presentation of non-GAAP measures. Accordingly, EBITDA, Adjusted EBITDA, adjusted net income and free cash flow may not be presented in filings made with the SEC, or may not be presented in the same manner as in this offering memorandum. For a reconciliation of EBITDA, Adjusted EBITDA, adjusted net (loss) income to net (loss) income attributable to the Company and free cash flow to net cash provided by (used in) operating activities, see the section entitled “Summary Financial Data.”

## **Market And Industry Data**

This offering memorandum includes or incorporates by reference market share and industry data and forecasts that we have obtained from market research, consultant surveys, publicly available information and industry publications and surveys, provided by such consultants as The Nielsen Company (UK) (“Nielsen”). Industry surveys, publications, consultant surveys and forecasts generally state that the information contained therein has been obtained from sources believed to be reliable, but there can be no assurance as to the accuracy and completeness of such information. We have not independently verified any of the data from third-party sources nor have we ascertained the underlying economic assumptions relied upon therein. Additionally, we have supplemented third-party information where necessary with management estimates based on our review of internal surveys, information from our customers and vendors, trade and business organizations and other contacts in markets in which we operate, and our management’s knowledge and experience. However, these estimates are subject to change and are uncertain due to limits on the availability and reliability of primary sources of information and the voluntary nature of the data gathering process. As a result, you should be aware that industry data included or incorporated by reference herein, and estimates and beliefs based on that data, may not be reliable. Neither we nor the initial purchasers make any representation as to the accuracy or completeness of such information.

## **Trademarks And Trade Names**

We own, have rights or will own or acquire rights to trademarks, service marks, copyrights and trade names that we use in conjunction with the operation of our business, including *Cott*® and *Red Rain*® in the United States, Canada, and the United Kingdom, *Stars & Stripes*®, *Vess*®, *Vintage*®, *So Clear*®, *Shanstar*®, *Harvest Classic*®, *Chadwick Bay*®, *Exact*® and *Golden Crown*® in the United States, *Emerge*®, *Red Rooster*®, *MacB*®, *Carters*®, *Calypso*®, *Mr. Freeze*®, *Jubbly*®, and *Ben Shaws*® in the United Kingdom, *Stars & Stripes*® in Mexico, and the *RC*® mark in various formats in more than 120 countries and territories outside of North America. Moreover, we are licensed to use certain trademarks such as *Old Jamaica Ginger Beer*™ and *Ting*™ in the United Kingdom. This offering memorandum also includes trademarks, service marks and trade names of other companies. Each trademark, service mark or trade name of any other company appearing in this offering memorandum belongs to its holder. Unless otherwise indicated, use or display by us of other parties’ trademarks, service marks or trade names is not intended to and does not imply a relationship with, or endorsement or sponsorship by us of the trademark, service mark or trade name owner.

## **INCORPORATION BY REFERENCE OF CERTAIN DOCUMENTS**

We are “incorporating by reference” into this offering memorandum certain information we file with the SEC, which means that we are disclosing important information to you by referring you to those documents. The documents that we incorporate disclose important information that each prospective purchaser should consider when deciding whether to invest in the notes. The information we incorporate by reference in this offering

memorandum is legally deemed to be a part of this offering memorandum, and later information that we file with the SEC will automatically update and supersede the information included in this offering memorandum and the documents listed below. We incorporate the documents listed below:

- our Annual Report on Form 10-K for the year ended December 28, 2013, filed with the SEC on February 24, 2014;
- our Quarterly Report on Form 10-Q for the quarter ended March 29, 2014, filed with the SEC on May 8, 2014;
- our Current Reports on Form 8-K filed with the SEC on January 3, 2014, March 7, 2014, May 7, 2014 and June 2, 2014 (except, in any such case, the portions furnished and not filed pursuant to Item 2.02, Item 7.01 or otherwise); and
- all documents filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this offering memorandum until all of the securities being offered under this offering memorandum are sold (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K).

The information incorporated by reference contains important information about us and our financial condition, and is considered to be part of this offering memorandum. Any statement contained in a document incorporated or deemed to be incorporated by reference in this offering memorandum will be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which is or is deemed to be incorporated by reference in this offering memorandum modifies or supersedes that statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this offering memorandum.

You may request a copy of these filings, at no cost, by writing or calling us at the following address or telephone number:

Cott Corporation  
5519 West Idlewild Avenue  
Tampa, Florida, United States 33634  
Attention: Investor Relations  
Telephone: (813) 313-1840

Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference into such filings.



## SUMMARY

*This summary highlights selected information appearing elsewhere in this offering memorandum. As a result, it is not complete and does not contain all of the information included and incorporated by reference that you should consider before purchasing the notes. You should read the following summary in conjunction with the more detailed information included or incorporated by reference herein.*

*As used in this offering memorandum, unless the context otherwise requires or as is otherwise indicated, the words “we,” “us,” “our,” “Cott,” “Company” and words of similar import refer to Cott Corporation, Cott Beverages Inc. and their subsidiaries on a consolidated basis. In this offering memorandum, unless otherwise specified or the context otherwise requires, all dollar amounts are expressed in United States dollars (“U.S. dollars”).*

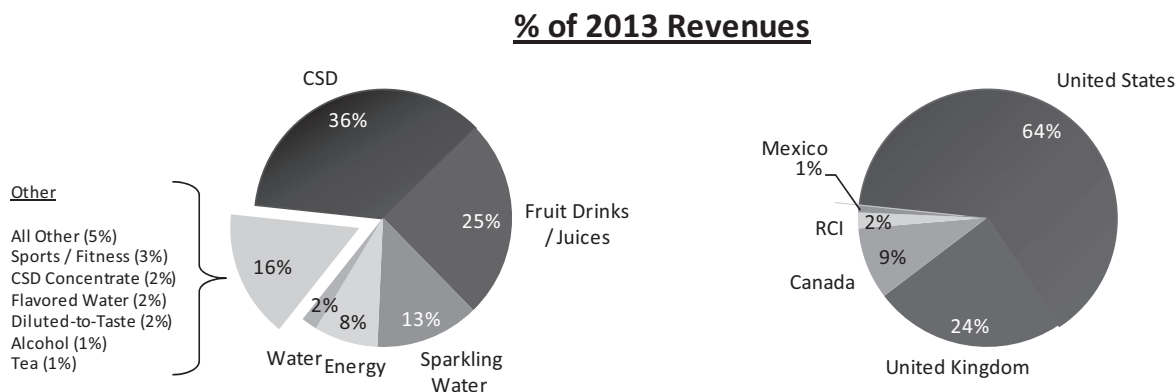
### Our Company

We are one of the world’s largest producers of beverages on behalf of retailers, brand owners and distributors. We market or supply over 500 retail, licensed and Company-owned brands in the United States, the United Kingdom/Europe, Canada and Mexico. Our product lines include carbonated soft drinks (“CSDs”), 100% shelf stable juice and juice-based products, clear, still and sparkling flavored waters, energy drinks and shots, sports drinks, new age beverages and ready-to-drink teas, as well as beverage concentrates, liquid enhancers, freezables and ready-to-drink alcoholic beverages. The recent Aimia Foods Acquisition (as defined below) allowed us to further improve our product, package and channel diversification by expanding our product line to include hot chocolate, coffee, malt drinks, creamers/whiteners and cereals, and by providing us with new packaging formats, which include pouches, jars, sticks, in-cup products, sachets and block-bottom bags. We are a leading producer of private-label beverages in each of the United States, Canada and the United Kingdom by annual volume of cases produced. We generated revenues and Adjusted EBITDA of approximately \$2,094.0 million and \$196.8 million, respectively, for the year ended December 28, 2013 and revenues and Adjusted EBITDA of \$2,063.7 million and \$190.8 million, respectively, for the last twelve months ended March 29, 2014.

Our business operates through three reporting segments—North America (“North America”) (which includes our U.S. (“U.S.”) operating segment and Canada operating segment), U.K. (“U.K.”) (which includes our United Kingdom reporting unit and our Continental European (“European”) reporting unit), and All Other (“All Other”) (which includes our Mexico operating segment, Royal Crown International (“RCI”) operating segment and other Miscellaneous Expenses).

### Product Categories

The following chart sets forth Cott’s net revenues for the twelve months ended December 29, 2013 by product category and geographic mix:



We have a diversified product portfolio across major beverage categories with an expanding presence in beverages that are on-trend with consumer demand. Since 2009, we have invested in developing new products and completed four acquisitions to enhance the breadth of our product focus and to continue to diversify our revenues. Consequently, CSDs have declined from 60% of our revenues in 2009 to 36% of our revenues in 2013. Although we sell the majority of our beverages to customers who own the trademarks associated with the products, we also utilize several of our own brands such as Red Rain, Stars & Stripes and Red Rooster. In addition, we own the rights to the Royal Crown mark in various formats in more than 120 countries and territories outside of North America.

### **Competitive Strengths**

We believe that our competitive strengths will enable us to maintain our position as one of the world's largest producers of beverages on behalf of retailers, brand owners and distributors, as well as allow us to capitalize on future opportunities to drive sustainable and profitable growth. Our competitive strengths include:

#### ***Diverse Product Portfolio***

We operate an extensive beverage manufacturing plant network with the capability to produce a diverse product portfolio as outlined below, including on-trend, higher growth beverage categories such as energy drinks and shots, sports drinks, ready-to-drink teas, ready-to-drink alcohol and liquid enhancers.

#### **Carbonated soft drinks (natural and preserved)**



#### **Shelf stable juices and juice- based products**



#### **New age beverages, clear, still and sparkling flavored waters**



#### **Energy drinks and shots**



#### **Sports drinks**



#### **Ready-to-drink teas**



#### **Ready-to-drink alcohol beverages**



#### **Liquid enhancers, concentrates and dilute-to-taste (DTT)**



Over the last two years, we have made strategic investments to broaden our product scope and enhance our packaging capabilities. These investments have been focused on higher growth and margin products and packaging formats, including ready-to-drink teas, ready-to-drink alcohol, energy drinks and shots and liquid enhancers, as well as packaging investments including pouch, combi cartons, cups and freezable products. The Aimia Foods Acquisition has further expanded our product line to include hot chocolate, coffee, malt drinks, creamers/whiteners and cereals, and has provided us with new packaging formats, including jars, sticks, in-cup products, sachets and block-bottom bags.

#### ***Extensive, Flexible Manufacturing Capabilities***

Our business is supported by our extensive manufacturing network and flexible production capabilities. Our manufacturing footprint encompasses 33 strategically located beverage manufacturing and fruit processing facilities, including 21 in the United States, four in Canada, seven in the United Kingdom and one in Mexico. Our United States facility in Columbus, Georgia is also a vertically integrated concentrate facility that supplies our manufacturing plants and RCI's global customer base.

We are the only dedicated beverage company producing on behalf of retailers, brand owners and distributors with a manufacturing footprint across North America. Manufacturing flexibility is one of our core competencies and is critical to our success, as our products will typically feature customized packaging, design and graphics for our key retailer customers. Our ability to produce multiple stock keeping units and packages on our production lines and manage complexities through quick-line changeover processes differentiates us from our competition.

The map below depicts our manufacturing footprint in the United States and Canada:



In addition to supporting our retail customers with their private label programs, we leverage our broad manufacturing capabilities to produce beverages for brand owners. Our growing contract manufacturing business provides several benefits, including utilizing excess capacity, enhancing margins and reducing working capital requirements.

### ***Strategic Importance to Our Customers***

Our scale and strong leadership position in our core categories enables us to provide differentiated and superior service levels to our customers. We have longstanding partnerships with many of the world's leading retailers in the grocery, mass-merchandise and drug store channels, as well as brand owners for whom we contract manufacture. We have a proven track record with our key customers, and we are able to differentiate ourselves by providing a high level of coordination with our customers in areas such as supply chain, product development and customer service. Our close partnerships with our customers allow us to work on supply chain planning and execution in order to help our customers to:

- minimize freight costs;
- provide superior manufacturing expertise and one stop sourcing;
- reduce working capital requirements; and
- increase in-store product availability.

A high level of customer integration and partnership coupled with a nationwide manufacturing footprint in the United States, the United Kingdom, Canada and Mexico is critical for the development of successful beverage programs for our customers. We work as partners with our customers on new product development and

packaging designs. Our role includes providing market expertise as well as knowledge of category trends that may present additional opportunities for our customers.

### ***Strong Management Team with Significant Operating Experience***

We have in place a strong executive team with extensive beverage and consumer goods industry experience to build on our strengths and to implement our business strategy. Our management team has a proven track record of successful management with positive operating results, both with us and in previous leadership roles in the consumer goods and beverage industries.

Our management team is led by Jerry Fowden, our Chief Executive Officer. Mr. Fowden has significant experience in the beverage industry, including leadership positions at AB InBev (formerly known as InBev), Hero Group AG and PepsiCo. In addition, our management team includes Jay Wells, our Chief Financial Officer. Mr. Wells has held senior finance positions in both public and private companies, including approximately seven years at Molson Coors. Steven Kitching was appointed Vice President of Cott's North America business unit in March 2013, having previously run our U.K. and European business unit, as well as previous positions at Inbev and Interbrew.

### **Business Strategy**

Our primary goal is to maintain long-term profitability and enhance our position as the market leader and preferred supplier of beverages on behalf of retailers, brand owners, and distributors in the markets where we operate as well as in markets outside of those where we have business concentrations today. Continued leadership in our core markets will enable us to sustain and grow profitability as we drive for increased penetration and share growth within our core product categories and expand into other beverage markets. We believe that the following strategies will help us to achieve our goal:

#### ***4 C's— Cost Discipline and Focus on Cash Flow Generation***

##### ***1. Focus on Customer Relationships***

Customer relationships are particularly important for Cott, because many of our products bear our customers' brand names. With a continued focus on our customer partnerships, we are able to anticipate our customers' needs and deliver high quality products and service at an attractive value that will help them provide quality, value-oriented products to their consumers. Several of our key customers have long-standing relationships with the business.

We will continue to focus on our high levels of customer service as a differentiating factor, as well as innovations through the introduction of new packages, flavors and varieties of beverages. We believe our focus on our customers will enable us to leverage our existing relationships and to develop new ones in existing and new markets. As a fast follower of innovative products, our goal is to identify new products that are succeeding in the marketplace and develop similar products of high quality for our customers to offer their consumers at a better value.

##### ***2. Continue to Lower Operating Costs***

We understand that our long-term success will be closely tied to our ability to remain a low-cost supplier. Effective management of our operating costs is critical to our success. On an ongoing basis we review our fixed overhead and manufacturing costs in an effort to continually improve our operating efficiencies. Consequently, we target our selling, general and administrative costs to be between approximately 7-8% of

revenues through Company-wide budget initiatives and efficiency programs. We also enter into contract commitments with suppliers of key raw materials, such as aluminum sheet metal, high fructose corn syrup (“HFCS”), polyethylene terephthalate (“PET”) bottles, caps and preforms, and fruit and fruit concentrates, to better manage the commodity cycles.

### 3. Control Capital Expenditures

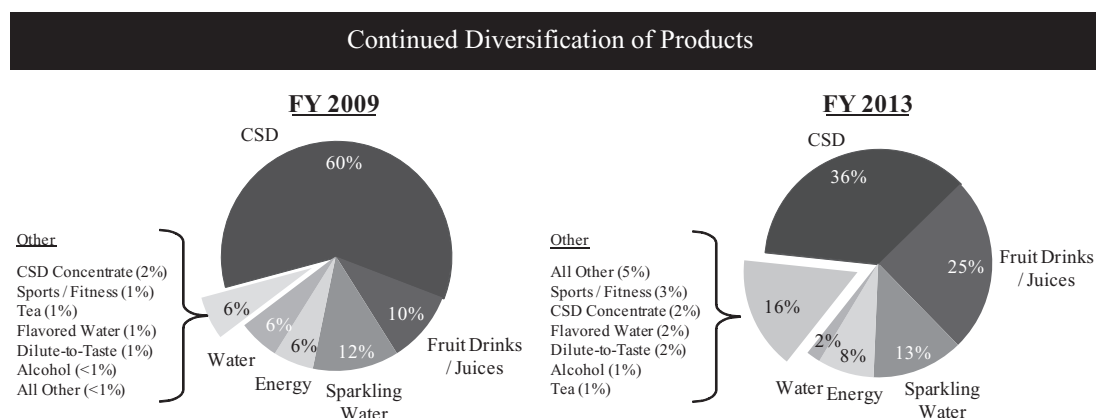
We are committed to carefully prioritizing our capital investments that provide the best financial returns for Cott and for our customers, while maintaining safety, efficiency and superior product quality. Our manufacturing facilities operate according to the highest standards of safety and product quality. We perform regular third-party audits of our facilities and are subject to quality audits on behalf of our customers. We will continue to evaluate growth and other opportunities, while remaining mindful of our total capital expenditure targets. Capital expenditures over the last three years have been approximately \$25-\$50 million below depreciation and through our continued focus on cost reductions we expect total capital expenditure spending to continue to be between 2-3% of total revenues on an annual basis. As a low-cost supplier we actively manage our manufacturing capacity and routinely rationalize under-utilized assets. In fiscal year 2013, we announced the planned closure of two facilities.

### 4. Deliver Significant Free Cash Flow

We believe that a strong financial position will enable us to capitalize on operational and strategic opportunities in the marketplace. We continuously review and improve the effectiveness of our cash management processes, including extending vendor payment terms, managing inventory levels and negotiating customer payment terms to reduce days outstanding. We strive to achieve the most optimal working capital level, rationalize our capital expenditures and continuously drive operating cost improvements to enhance cash flow and fortify our balance sheet. As a result, we have generated more than \$100 million of free cash flow per year since 2009. Over the last three years, we have generated a cumulative amount of \$318 million in free cash flow, of which \$188 million has been used to repay existing debt.

### New Business Opportunities

We continue to diversify our revenues by expanding into new categories, channels and products. Given the success of these initiatives over the past few years, we expect to continue to prioritize these efforts through both organic and acquisition driven investments. The charts below show a comparison of our product lines for the fiscal year ended 2009 and the fiscal year ended 2013:



We believe contract manufacturing will be a significant growth opportunity allowing us to continue to capitalize on outsourcing trends by brand owners. We have entered into contract manufacturing arrangements across a number of product categories such as juice, juice drinks and teas. Consequently, our North American contract manufacturing 8 oz equivalent volumes increased over 100% during the first quarter of 2014 relative to the first quarter of 2013. We believe that over the next three years 30 to 50 million additional raw cases (50 to 80 million 8 oz equivalent cases) of contract manufacturing product is attainable. By expanding our contract manufacturing business, we will be able to increase our existing asset utilization by improving line efficiency rates. Additionally contract manufacturing revenues reduce our exposure to commodity volatility and require lower working capital investments as compared to private label. We also believe foodservice will be a significant scale opportunity in the future and have dedicated a sales team to pursuing entry into foodservice categories, channels and products.

To complement and support our diversification initiatives, we have invested in new packaging formats. In the first quarter of 2014, we installed two pouch fillers and associated pasteurizers at our Dallas-Fort Worth facility. Additionally, we have installed packaging capabilities for 16 oz and 24 oz cans, liquid enhancers and 3 oz plastic bottles. We continue to evaluate opportunities to expand our capabilities into new package formats. The following graphics set forth our current packaging formats:



### ***Pursue Select Acquisitions***

We are looking to diversify our business by accelerating the pace and scale of our acquisitions outside of the areas where we have business concentrations today. In particular, we are pursuing acquisitions outside of those relating to CSDs and shelf stable juices, with a focus on other beverage categories and beverage adjacencies, as well as on driving our channel mix beyond large format retail and supermarket stores. We intend to continue to evaluate and pursue strategic opportunities to enhance our industry position, strengthen our business and build value for our shareholders. This acquisition strategy will allow us to diversify our revenue base, increase cross-selling opportunities and further enhance procurement economies of scale. We will continue to be selective and disciplined in our acquisition strategy by looking for businesses that provide improved growth and enhanced gross margins, as well as cost synergies. We believe that opportunities exist for us to enhance our scale, reduce fixed manufacturing costs and broaden our product portfolio.

In May 2014, our U.K. reporting segment acquired 100% of the share capital of Aimia Foods (Holdings) Limited (“Aimia Foods”), a privately owned business based in Merseyside, United Kingdom (the “Aimia Foods Acquisition”). See “Recent Developments—Aimia Foods Acquisition.”

In June 2013, our U.K. reporting segment acquired 100% of the share capital of Cooke Bros. Holdings Limited (the “Calypso Soft Drinks Acquisition”), which includes the subsidiary companies Calypso Soft Drinks Limited and Mr. Freeze (Europe) Limited (together, “Calypso Soft Drinks”). Calypso Soft Drinks produces fruit juices, juice drinks, soft drinks, and freeze products in the United Kingdom. The Calypso Soft Drinks Acquisition provided increased product offerings, logistical synergies and access to an additional production line. The addition of Calypso Soft Drinks increased our offering of products and packaging with the introduction of combi



cartons, single serve cups and cuplets, and freezable formats and brands. Equally important, the acquisition provided three new channels: foodservice, education and small convenience stores.

The aggregate purchase price for the Calypso Soft Drinks Acquisition was \$12.1 million, which included approximately \$7.0 million paid at closing, deferred payments of approximately \$2.3 million and \$3.0 million to be paid on the first and second anniversary of the closing date, respectively, of the Calypso Soft Drinks Acquisition. In connection with the Calypso Soft Drinks Acquisition, we paid off \$18.5 million of outstanding debt of the acquired companies.

In March 2012, our U.K. reporting segment acquired a beverage and wholesale business based in Scotland for approximately \$5.0 million.

On August 17, 2010, we completed the acquisition (the “Cliffstar Acquisition”) of substantially all of the assets and liabilities of Cliffstar Corporation (“Cliffstar”) and its affiliated companies pursuant to an Asset Purchase Agreement dated July 7, 2010 for approximately \$503.0 million payable in cash, \$14.0 million in deferred consideration paid over three years and contingent consideration of \$34.9 million. Following completion of the Cliffstar Acquisition, we broadened our product portfolio to include shelf-stable juices such as apple juice, grape juice, cranberry juice and juice-blends, as well as functional and new age beverages, which allowed us to penetrate the juice market and further expand our private label offerings.

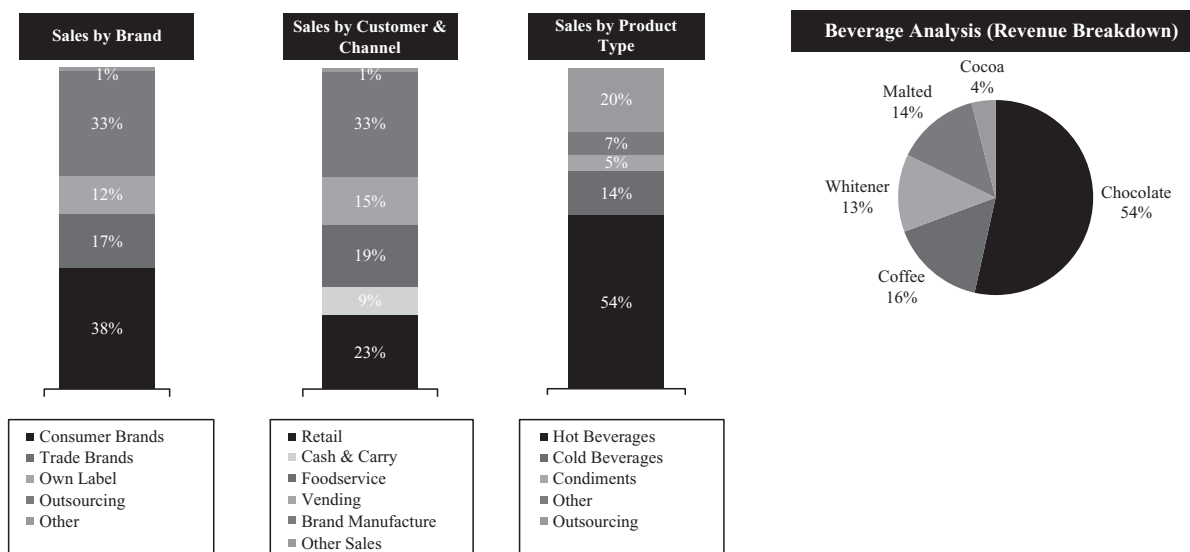
## **Recent Developments**

### ***Aimia Foods Acquisition***

In May 2014, our U.K. reporting segment acquired 100% of the share capital of Aimia Foods. The purchase price included the payment of approximately \$80 million at closing plus an adjustment for working capital, \$33 million in deferred consideration payable in September 2014, and on-target earn-out consideration of \$20 million payable upon the achievement of adjusted EBITDA of approximately \$21 million for Aimia Foods’ fiscal year ended June 2016, with a minimum earn-out consideration of \$13 million and a maximum earnout consideration of \$27 million. The purchase price was funded through cash on hand and borrowings under our ABL Facility.



The acquisition of Aimia Foods provides us with access to growing, higher value categories in line with our stated strategy to diversify our revenues by expanding into new categories, channels and products. More specifically, Aimia Foods provides diversification in beverages and beverage adjacencies with a focus on channel diversification, as outlined below:



For the year ended June 30, 2013, approximately 72% of Aimia Foods' revenue was attributable to categories, such as hot chocolate, coffee, malt drinks, creamers/whiteners and cereals. Aimia Foods has a strong presence outside large format retail and supermarket stores which will allow us to improve channel diversification. For the year ended June 30, 2013, approximately 43% of Aimia Foods' revenue was attributable to the wholesale, vending and foodservice channels and 33% was attributable to contract manufacturing. Aimia Foods provides us with new packaging formats, including pouches, jars, sticks, in-cup products, sachets and block-bottom bags. Additionally, Aimia Foods has a low-cost operational approach and scalable infrastructure, which creates a stable platform for future expansion opportunities.

### ***Tender Offer for 2018 Notes***

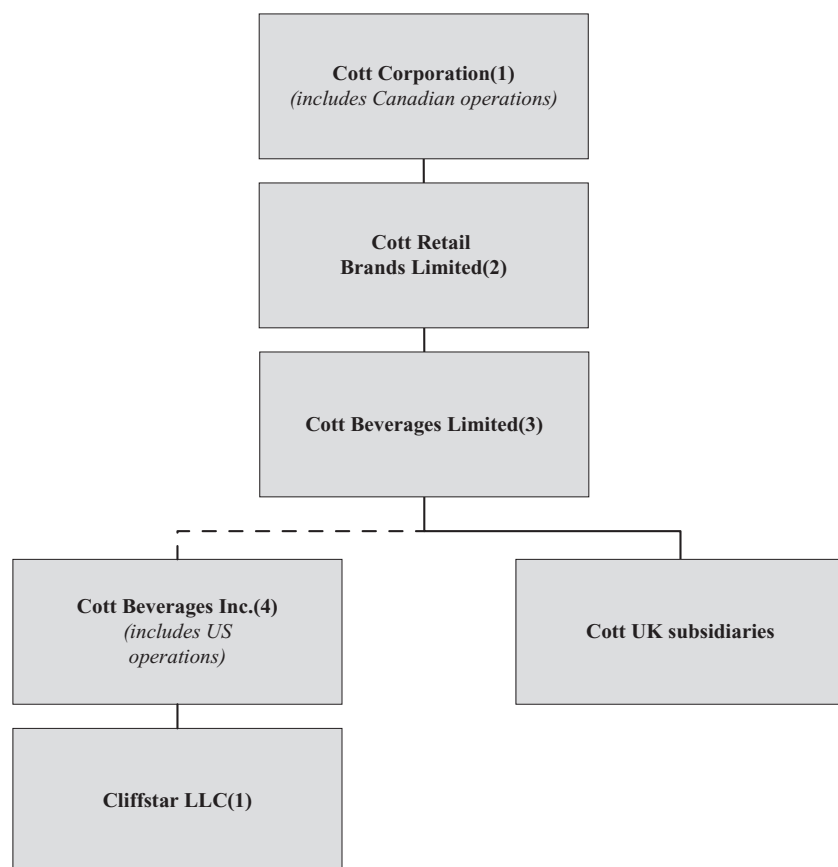
On June 10, 2014, we commenced a cash tender offer (the "Tender Offer") for any and all of our outstanding 2018 Notes. In connection with the Tender Offer, we are also seeking consents (the "Consent Solicitation") to eliminate substantially all of the restrictive covenants in the indenture governing the 2018 Notes as described in the Offer to Purchase dated June 10, 2014 (the "Offer to Purchase"). The Tender Offer is scheduled to expire at 11:59 p.m., New York City time, on July 8, 2014, subject to our right to extend the Tender Offer, with an early consent deadline of June 23, 2014.

The Tender Offer and Consent Solicitation is being made pursuant to the Offer to Purchase and this offering memorandum is not an offer to purchase or a solicitation of any consent with respect to any of the 2018 Notes. We intend to use a portion of the net proceeds from this offering to fund the repurchase of the 2018 Notes in the Tender Offer and, if the Tender Offer is not consummated, or if we purchase less than all outstanding 2018 Notes in the Tender Offer, to fund the redemption of any 2018 Notes that remain outstanding, although we have no legal obligation to do so and the selection of any particular redemption date is in our discretion.

The closing of the Tender Offer will be conditioned on, among other things, our having obtained sufficient funds to repurchase any and all of the outstanding 2018 Notes tendered pursuant to the Tender Offer. This offering is not conditioned upon the consummation of the Tender Offer.

## Corporate Structure

The following chart depicts our organizational structure giving effect to this offering. Certain intermediate holding companies and other entities that do not have significant operations have been omitted for illustrative purposes. Omitted entities include guarantors of the notes offered hereby, the 2018 Notes and the ABL Facility and the newly acquired Aimia Foods. The chart also omits entities holding the Mexican operations, which will not be guarantors of the notes offered hereby and do not guarantee the 2018 Notes or the ABL Facility.



\* Shaded boxes indicate guarantors of the notes offered hereby, the 2018 Notes and the ABL Facility

(1) Borrower under the ABL Facility. Owns interest in non-guarantor subsidiaries.

(2) Owns interest in a non-guarantor subsidiary.

(3) Borrower under the ABL Facility.

(4) Borrower under the ABL Facility, issuer of the 2018 Notes and Issuer of the notes offered hereby. Owns an interest in the United Kingdom holding company that owns Aimia Foods. Owns interest in non-guarantor subsidiaries.

## **Corporate Information**

Cott Corporation was incorporated in 1955 and is governed by the Canada Business Corporations Act. Cott Beverages Inc. was incorporated in 1991 as a Georgia corporation. Our registered Canadian office is located at 333 Avro Avenue, Pointe-Claire, Quebec, Canada H9R 5W3 and our principal executive offices are located at 5519 W. Idlewild Avenue, Tampa, Florida, United States 33634 and 6525 Viscount Road, Mississauga, Ontario, Canada L4V 1H6. Our telephone number is (813) 313-1800. Our website address is *www.cott.com*. **The information contained on or that can be accessed through our website does not constitute a part of this offering memorandum.**

## The Offering

*We provide the following summary solely for your convenience. This summary is not a complete description of this offering. You should read the full text and more specific details contained elsewhere in the offering memorandum. For a more detailed description of the notes offered, see the section entitled “Description of Notes” in this offering memorandum.*

**Issuer** ..... Cott Beverages Inc. (the “Issuer”).

**Notes Offered** ..... \$525,000,000 in aggregate principal amount of % Senior Notes due 2022.

**Maturity Date** ..... , 2022.

**Interest Rate** ..... We will pay interest on the notes at an annual interest rate of %.

**Interest Payment Dates** ..... Interest on the notes will be payable semi-annually in arrears on and of each year, beginning on , 2014.

**Guarantees** ..... The Issuer’s obligations under the notes will be fully and unconditionally guaranteed on a senior basis, jointly and severally, by Cott Corporation and all of our subsidiaries that guarantee indebtedness under our ABL Facility and by any wholly owned subsidiary that guarantees certain indebtedness of Cott Corporation or any of the other guarantors. Certain of our subsidiaries will not be guarantors of the notes.

**Ranking** ..... The notes and the guarantees will be unsecured senior indebtedness. Accordingly, they will be:

- *pari passu* in right of payment with all of our and our guarantors’ existing and future senior indebtedness, including debt under the ABL Facility;
- senior in right of payment to all of our and our guarantors’ existing and future subordinated indebtedness;
- effectively subordinated to all of our and our guarantors’ secured indebtedness, including borrowings under the ABL Facility, to the extent of the value of the assets securing such indebtedness; and
- structurally subordinated to all obligations of our non-guarantor subsidiaries.

As of March 29, 2014, after giving effect to this offering and the application of net proceeds therefrom for the repurchase of any and all of the outstanding 2018 Notes and the repayment of the borrowings outstanding under the ABL Facility, \$552.6 million of indebtedness would have been outstanding, of which \$27.6 million would have been secured indebtedness. As of March 29, 2014, the non-guarantor subsidiaries held approximately \$47.9 million of our

total assets of approximately \$1,454.2 million and had liabilities of approximately \$41.5 million.

<b>Optional Redemption</b> .....	Prior to _____, 2017, we may redeem up to 40% of the aggregate principal amount of the notes with the proceeds of certain equity offerings, plus accrued and unpaid interest, if any, to the date of redemption.
	At any time prior to _____, 2017, we may redeem some or all of the notes at a redemption price equal to the principal amount of the notes redeemed plus accrued and unpaid interest to the date of redemption plus a “make whole” premium set forth under “Description of Notes—Redemption at Make Whole Premium.”
	In addition, at any time on or after _____, 2017, we may redeem some or all of the notes at the redemption prices set forth under “Description of Notes—Optional Redemption,” plus accrued and unpaid interest, if any, to the date of redemption.
<b>Offer to Purchase</b> .....	If we experience specific kinds of changes of control, and, under certain circumstances, if we sell certain assets, we may be required to offer to purchase all or a portion of the notes at 101% of the principal amount of the notes on the date of purchase plus any accrued and unpaid interest and additional interest, if any, to the date of repurchase. See “Description of Notes—Change of Control” and “Description of Notes—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock.”
<b>Covenants</b> .....	<p>The indenture governing the notes will contain certain covenants limiting our ability and the ability of our restricted subsidiaries to, under certain circumstances:</p> <ul style="list-style-type: none"> <li>• incur additional indebtedness and issue preferred stock;</li> <li>• pay dividends or distributions on or purchase our equity interests;</li> <li>• make other restricted payments or investments;</li> <li>• redeem debt that is junior in right of payment to the notes;</li> <li>• use our assets as security in other transactions;</li> <li>• place restrictions on distributions and other payments from restricted subsidiaries;</li> <li>• sell certain assets or merge with or into other entities; and</li> <li>• enter into transactions with affiliates.</li> </ul> <p>Each of the covenants is subject to a number of important exceptions and qualifications. See “Description of Notes—Certain Covenants.”</p>
<b>Exchange Offer; Registration Rights</b> .....	We have agreed to exchange the notes for a new issue of substantially identical debt securities (except that the new exchange notes will not

contain terms with respect to additional interest or transfer restrictions) registered under the Securities Act as evidence of the same underlying obligation of indebtedness within 365 days after the issue date of the notes. We have also agreed to file a shelf registration statement to cover resales of the notes under certain circumstances. If we fail to satisfy these obligations, we have agreed to pay liquidated damages to the holders of the notes under certain circumstances. See “Exchange Offer; Registration Rights.”

**Use of Proceeds** ..... We estimate that our net proceeds from this offering, after the initial purchasers’ discounts and commissions and estimated offering fees and expenses, will be approximately \$       million. We intend to use the net proceeds from this offering to repurchase or redeem any and all of the outstanding 2018 Notes, to repay the loans outstanding under the ABL Facility, to pay related fees and expenses and for general corporate purposes. See “Use of Proceeds.”

**Transfer Restrictions** ..... The notes have not been registered under the Securities Act or any other securities law. The notes are subject to restrictions on transfer and may only be offered or sold in transactions exempt from, or not subject to, the registration requirements of these securities laws. See “Transfer Restrictions.”

**Absence of Established Markets for the Notes** ..... The notes are a new issue of securities, and currently there is no market for the notes. We do not intend to apply for the notes to be listed on any securities exchange, or to arrange for any quotation system to quote them. The initial purchasers have advised us that they intend to make markets for the notes, but they are not obligated to do so. The initial purchasers may discontinue any market making in the notes at any time in their sole discretion. See “Plan of Distribution.” Accordingly, we cannot assure you that liquid markets will develop for the notes.

**Risk Factors** ..... An investment in the notes involves substantial risk. See “Risk Factors” for a description of certain of the risks you should consider before investing in the notes.

## Summary Financial Data

The following tables set forth our summary consolidated financial data. You should read the following summary consolidated financial data in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in our Annual Report on Form 10-K for the year ended December 28, 2013 (the “Form 10-K”) and in our Quarterly Report on Form 10-Q for the quarter ended March 29, 2014 (the “Form 10-Q”), our audited consolidated financial statements and related notes and our unaudited interim consolidated financial statements and related notes in each case, included or incorporated by reference herein. See the sections entitled “Where You Can Find More Information” and “Incorporation by Reference of Certain Documents.”

Our summary historical consolidated financial data as of and for the years ended December 31, 2011, December 29, 2012 and December 28, 2013 has been derived from our audited historical consolidated financial statements incorporated by reference herein. Our summary historical consolidated financial data for the three months ended March 30, 2013 and March 29, 2014 and the balance sheet data as of March 29, 2014 have been derived from our unaudited interim historical consolidated financial statements incorporated by reference herein. The summary historical consolidated financial data as of and for the twelve month period ended March 29, 2014 has been prepared by adding the statement of operations data for the three months ended March 29, 2014 and the year ended December 28, 2013 and subtracting the statement of operations data for the three months ended March 30, 2013. In the opinion of management, the unaudited interim consolidated financial data reflect all adjustments, consisting of normal recurring adjustments, necessary to present fairly our financial position for those periods. The results of operations for the interim periods are not necessarily indicative of the results to be expected for the full year or any future period.

	Unaudited					Twelve Months Ended March 29, 2014
	Fiscal Year Ended			Three Months Ended		
	Dec. 31, 2011	Dec. 29, 2012	Dec. 28, 2013	March 30, 2013	March 29, 2014	
	(millions of U.S. dollars)					
<b>Income Statement Data:</b>						
Revenue	\$2,334.6	\$2,250.6	\$2,094.0	\$505.4	\$475.1	\$2,063.7
Cost of sales	2,058.0	1,961.1	1,842.0	449.0	424.8	1,817.8
Gross Profit	276.6	289.5	252.0	56.4	50.3	245.9
Selling, general and administrative expenses	172.7	178.0	160.4	41.3	42.3	161.4
Loss on disposal of property, plant and equipment	1.2	1.8	1.0	—	0.1	1.1
Restructuring and asset impairments:						
Restructuring	—	—	2.0	—	2.2	4.2
Asset impairments	0.6	—	—	—	1.6	1.6
Intangible asset impairments	1.4	—	—	—	—	—
Operating income (loss)	100.7	109.7	88.6	15.1	4.1	77.6
Contingent consideration earn-out adjustment	0.9	0.6	—	—	—	—
Other (income) expense, net	2.2	(2.0)	12.8	0.3	(2.3)	10.2
Interest expense, net	57.1	54.2	51.6	13.3	9.8	48.1
Income (loss) before income taxes	40.5	56.9	24.2	1.5	(3.4)	19.3
Income tax (benefit) expense	(0.7)	4.6	2.2	0.5	(0.9)	0.8
Net income (loss)	41.2	52.3	22.0	1.0	(2.5)	18.5
Less: Net income attributable to non-controlling interests	3.6	4.5	5.0	1.0	1.4	5.4
Net income (loss) attributed to Cott Corporation	\$ 37.6	\$ 47.8	\$ 17.0	\$ —	\$ (3.9)	\$ 13.1



	Fiscal Year Ended			Unaudited Three Months Ended	
	Dec. 31, 2011	Dec. 29, 2012	Dec. 28, 2013	March 30, 2013	March 29, 2014
	(millions of U.S. dollars)				
<b>Cash Flow Data:</b>					
Cash flows provided by (used in) operating activities . . . . .	\$163.5	\$173.0	\$ 155.2	\$(58.6)	\$(52.5)
Cash flows used in investing activities . . . . .	(90.2)	(80.4)	(71.9)	(19.7)	(10.3)
Cash flows provided by (used in) financing activities . . . . .	(20.3)	(16.2)	(213.3)	(5.5)	56.1

	Fiscal Year Ended			Unaudited Three Months Ended		Twelve Months Ended
	Dec. 31, 2011	Dec. 29, 2012	Dec. 28, 2013	March 30, 2013	March 29, 2014	
	(millions of U.S. dollars)					March 29, 2014

**Balance Sheet Data (at period end):**

Cash and cash equivalents . . . . .	\$ 100.9	\$ 179.4	\$ 47.2	\$ 93.0	\$ 40.6
Property, plant and equipment, less accumulated depreciation . . . . .	482.2	490.9	483.7	486.8	472.6
Total assets . . . . .	1,508.9	1,565.9	1,426.1	1,500.1	1,454.2
Short-term borrowings . . . . .	—	—	50.8	—	130.9
Long-term debt (excludes CPLTD)(1) . . . . .	602.1	601.8	403.5	601.4	387.8
Total debt . . . . .	605.5	603.7	458.2	603.4	522.6
Net debt(2) . . . . .	504.6	424.3	411.0	510.4	482.0
Total equity . . . . .	568.2	622.9	605.9	604.8	595.2

**Other Financial Data (unaudited):**

EBITDA(3) . . . . .	\$ 192.9	\$ 208.8	\$ 176.6	\$ 39.5	\$ 31.7	\$168.8
Adjusted EBITDA(4) . . . . .	199.0	212.9	196.8	40.1	34.1	190.8
Adjusted net income (loss)(5) . . . . .	41.7	51.9	36.3	0.4	(2.5)	33.4
Free cash flow(6) . . . . .	114.7	103.3	99.6	(78.5)	(61.3)	116.8
Capital expenditures(7) . . . . .	48.8	69.7	55.6	19.9	8.8	44.5
Depreciation and amortization . . . . .	95.3	97.7	100.8	24.7	25.3	101.4

(1) CPLTD is the current portion of long-term debt.

(2) Net debt means our total debt less cash and cash equivalents.

(3) EBITDA means earnings before interest expense, income taxes, depreciation, amortization and net income attributable to non-controlling interests. Other companies may define EBITDA differently and, as a result, our measure of EBITDA may not be directly comparable to EBITDA of other companies. A reconciliation of EBITDA to net income (loss) is included in footnote (5) below.

(4) Adjusted EBITDA means EBITDA adjusted for items which are not considered by management to be indicative of the underlying results. We believe that the inclusion of supplementary adjustments to EBITDA applied in presenting Adjusted EBITDA are appropriate to provide additional information to investors about our financial performance. However, we have incurred the charges and expenses that constitute these adjustment in prior periods and expect to incur them in future periods. These expectations are forward-looking statements within the meaning of the securities laws and actual results may vary due to various risks, including those identified under “Risk Factors.” Because we use these adjusted financial results in the management of our business and to understand underlying business performance, we believe this supplemental information is useful to investors for their independent evaluation and understanding of our business performance and the performance of our management. The non-GAAP financial measures described above are in addition to, and not meant to be considered superior to, or a substitute for, our financial statements prepared in accordance with GAAP. In addition, the non-GAAP financial measures included in this offering memorandum reflect our judgment of particular items, and may be different from, and therefore may not be comparable to, similarly titled

measures reported by other companies. The following table provides a reconciliation of Adjusted EBITDA to net income (loss):

				Unaudited		
	Fiscal Year Ended			Three Months Ended		Twelve Months Ended
	Dec. 31, 2011	Dec. 29, 2012	Dec. 28, 2013	March 30, 2013	March 29, 2014	March 29, 2014
	(millions of U.S. dollars)					
<b>Reconciliation:</b>						
<b>Net income (loss) attributed to Cott Corporation</b> . . . . .	\$ 37.6	\$ 47.8	\$ 17.0	\$ —	\$ (3.9)	\$ 13.1
Depreciation and amortization . . . . .	95.3	97.7	100.8	24.7	25.3	101.4
Interest expense, net . . . . .	57.1	54.2	51.6	13.3	9.8	48.1
Income tax (benefit) expense . . . . .	(0.7)	4.6	2.2	0.5	(0.9)	0.8
Net income attributable to non-controlling interests . . . . .	3.6	4.5	5.0	1.0	1.4	5.4
<b>EBITDA</b> . . . . .	<u>192.9</u>	<u>208.8</u>	<u>176.6</u>	<u>39.5</u>	<u>31.7</u>	<u>168.8</u>
Restructuring and asset impairments:						
Restructuring and asset impairments . . . . .	0.6	—	2.0	—	3.8	5.8
Intangible asset impairments . . . . .	1.4	—	—	—	—	—
Bond redemption costs . . . . .	—	—	12.7	—	0.9	13.6
Tax reorganization and regulatory costs . . . . .	—	—	1.4	—	0.1	1.5
Acquisition adjustments:						
Earnout adjustment . . . . .	0.9	0.6	—	—	—	—
Integration and acquisition costs . . . . .	0.3	3.5	4.1	0.6	(2.4)	1.1
Legal accrual . . . . .	2.9	—	—	—	—	—
<b>Adjusted EBITDA</b> . . . . .	<u>\$199.0</u>	<u>\$212.9</u>	<u>\$196.8</u>	<u>\$40.1</u>	<u>\$34.1</u>	<u>\$190.8</u>

(5) The following table provides a reconciliation of net (loss) attributed to Cott Corporation to adjusted net income attributed to Cott Corporation.

				Unaudited		
	For the Year Ended			Three Months Ended		Twelve Months Ended
	Dec. 31, 2011	Dec. 29, 2012	Dec. 28, 2013	March 30, 2013	March 29, 2014	March 29, 2014
	(millions of U.S. dollars)					
Net (loss) income attributed to Cott Corporation . . . . .	\$37.6	\$47.8	\$17.0	\$—	\$(3.9)	\$13.1
Restructuring, net of tax . . . . .	—	—	1.8	—	2.9	4.7
Tax reorganization and regulatory costs, net of tax . . . . .	—	—	1.4	—	0.1	1.5
Bond redemption costs, net of tax . . . . .	—	—	12.7	—	0.9	13.6
Acquisition adjustments, net of tax . . . . .				—		
Earnout adjustment . . . . .	0.9	0.6	—	—	—	—
Integration and acquisition costs . . . . .	3.2	3.5	3.4	0.4	(2.5)	0.5
Adjusted net (loss) income attributed to Cott Corporation . . . . .	\$41.7	\$51.9	\$36.3	\$ 0.4	\$(2.5)	\$33.4

(6) The following table provides a reconciliation of net cash provided by operating activities to free cash flow.

	For the Year Ended			Unaudited		Twelve Months Ended March 29, 2014
	Dec. 31, 2011	Dec. 29, 2012	Dec. 28, 2013	Three Months Ended March 30, 2013	March 29, 2014	
				(millions of U.S. dollars)		
<b>Net cash provided by (used in) operating activities . . .</b>	163.5	173.0	155.2	(58.6)	(52.5)	161.3
Less: Capital expenditures . . . . .	(48.8)	(69.7)	(55.6)	(19.9)	(8.8)	(44.5)
<b>Free Cash Flow . . . . .</b>	<u>\$114.7</u>	<u>\$103.3</u>	<u>\$ 99.6</u>	<u>\$(78.5)</u>	<u>\$(61.3)</u>	<u>\$116.8</u>

(7) Includes information technology expenditures.

## RISK FACTORS

*In considering whether to purchase the notes offered hereby, you should understand the high degree of risk involved. You should carefully consider the risk factors and other information contained in this offering memorandum and the risk factors and other information incorporated by reference under the caption “Item 1A. Risk Factors” in our Form 10-K, as well as the other information incorporated by reference herein as such risk factors and other information may be updated from time to time by our subsequent reports and other filings under the Exchange Act. See “Where You Can Find More Information” and “Incorporation by Reference of Certain Documents.” The risks below are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or results of operations.*

### **Risks Related to Our Business**

#### ***We may be unable to compete successfully in the highly competitive beverage category.***

The markets for our products are extremely competitive. In comparison to the major national brand beverage manufacturers, we are a relatively small participant in the industry. We face competition from the national brand beverage manufacturers in all of our markets, from other retailer brand beverage manufacturers and from other contract beverage manufacturers. If our competitors reduce their selling prices, increase the frequency of their promotional activities in our core market or enter into the production of private-label products or expand their contract manufacturing efforts, or if our customers do not allocate adequate shelf space for the beverages we supply, we could experience a decline in our volumes, be forced to reduce pricing, forgo price increases required to offset increased costs of raw materials and fuel, increase capital and other expenditures, or lose market share, any of which could adversely affect our profitability.

#### ***We may not be able to respond successfully to consumer trends related to our products.***

Consumer trends with respect to the products we sell are subject to change. Consumers are seeking increased variety in their beverages, and there is a growing interest among consumers, public health officials and government officials regarding the ingredients in our products, the attributes of those ingredients and health and wellness issues generally. In addition, some researchers, health advocates and dietary guidelines are encouraging consumers to reduce consumption of sugar-sweetened beverages, including those sweetened with HFCS or other nutritive sweeteners. As a result, consumer demand has declined for full-calorie CSDs and consumer demand has increased for products associated with health and wellness, such as reduced-calorie CSDs, water, enhanced water, teas and certain other non-carbonated beverages, including juices. Consumer preferences may change due to a variety of other factors, including the aging of the general population, changes in social trends, the real or perceived impact that the manufacturing of our products has on the environment, changes in consumer demographics, changes in travel, vacation or leisure activity patterns, negative publicity resulting from regulatory action or litigation against companies in the industry, or a downturn in economic conditions. Any of these changes may reduce consumers’ demand for our products.

We may not be able to develop or be a “fast follower” of innovative products that respond to consumer trends. Our failure to develop innovative products could put us at a competitive disadvantage in the marketplace and our business and financial results could be adversely affected.

#### ***Because a small number of customers account for a significant percentage of our sales, the loss of or reduction in sales to any significant customer could have a material adverse effect on our results of operations and financial condition.***

A significant portion of our revenue is concentrated in a small number of customers. Our customers include many large national and regional grocery, mass-merchandise, drugstore, wholesale and convenience store chains in our core markets of North America, the U.K. and Mexico, as well as customers for whom we

manufacture beverages on a contract basis. Sales to Walmart, our top customer in 2013, 2012 and 2011 accounted for 30.1%, 31.0% and 31.6%, respectively, of our total revenue. Sales to our top ten customers in 2013, 2012 and 2011 accounted for approximately 50.0%, 54.2% and 55.1%, respectively, of our total revenue. We expect that sales of our products to a limited number of customers will continue to account for a high percentage of our revenue for the foreseeable future.

The loss of Walmart or any significant customer, or customers that in the aggregate represent a significant portion of our revenue, or a material reduction in the amount of business we undertake with any such customer or customers, could have a material adverse effect on our operating results and cash flows. Furthermore, we could be adversely affected if Walmart or any significant customer reacts unfavorably to any pricing of our products or decides to de-emphasize or reduce their product offerings in the categories with which we supply them. At December 28, 2013, we had \$212.0 million of customer relationships recorded as an intangible asset. The permanent loss of any customer included in the intangible asset would result in impairment in the value of the intangible asset or accelerated amortization and could lead to an impairment of fixed assets that were used to service that client.

***Our ingredients, packaging supplies and other costs are subject to price increases and we may be unable to effectively pass rising costs on to our customers.***

We typically bear the risk of changes in prices on the ingredient and packaging in our products. The majority of our ingredient and packaging supply contracts allow our suppliers to alter the prices they charge us based on changes in the costs of the underlying commodities that are used to produce them. Aluminum for cans and ends, resin for polyethylene terephthalate (“PET”) bottles, caps and preforms, corn for HFCS, sugar, fruit and fruit concentrates are examples of these underlying commodities. In addition, the contracts for certain of our ingredient and packaging materials permit our suppliers to increase the costs they charge us based on increases in their cost of converting those underlying commodities into the materials that we purchase. In certain cases those increases are subject to negotiated limits. These changes in the prices we pay for ingredient and packaging materials occur at times that vary by product and supplier, and take place, on a monthly, quarterly or annual basis.

Accordingly, we bear the risk of fluctuations in the costs of these ingredient and packaging materials, including the underlying costs of the commodities used to manufacture them and, to some extent, the costs of converting those commodities into the materials we purchase. If the cost of these ingredients or packaging materials increases, we may be unable to pass these costs along to our customers through adjustments to the prices we charge. If we cannot pass on these increases to our customers on a timely basis, they could have a material adverse effect on our results of operations. If we are able to pass these costs on to our customers through price increases, the impact those increased prices could have on our volumes is uncertain.

Our beverage and concentrate production facilities use a significant amount of electricity, natural gas and other energy sources to operate. Fluctuations in the price of fuel and other energy sources for which we have not locked in long-term pricing commitments or arrangements would affect our operating costs, which could impact our profitability.

***If we fail to manage our operations successfully, our business and financial results may be materially and adversely affected.***

In recent years, we have grown our business and beverage offerings primarily through the acquisition of other companies, development of new product lines and growth with key customers. We believe that opportunities exist to increase sales of beverages in our markets by leveraging existing customer relationships, obtaining new customers, exploring new channels of distribution, introducing new products or identifying appropriate acquisition or strategic alliance candidates. The success of this strategy with respect to acquisitions depends on our ability to manage and integrate acquisitions (including the Calypso Soft Drinks Acquisition and

the Aimia Foods Acquisition) and alliances into our existing business. Furthermore, the businesses or product lines that we acquire or align with may not be integrated successfully into our business or prove profitable. In addition to the foregoing factors, our ability to expand our business in foreign countries is also dependent on, and may be limited by, our ability to comply with the laws of the various jurisdictions in which we may operate, as well as changes in local government regulations and policies in such jurisdictions. If we fail to manage the geographic allocation of production capacity surrounding customer demand in North America, we may lose certain customer product volume or have to utilize co-packers to fulfill our customer capacity obligations, either of which could negatively impact our financial results.

***We may devote a significant amount of our management's attention and resources to our ongoing review of strategic opportunities, and we may not be able to fully realize the potential benefit of any such alternatives that we pursue.***

As part of our overall strategic planning process, from time to time we evaluate whether there are alternatives available to complement our strategy of organic growth and growth through diversification, or otherwise enhance shareholder value. Accordingly, we may from time to time be engaged in evaluating potential transactions and other strategic alternatives, and we may engage in discussions that may result in one or more transactions. Although there would be uncertainty that any of these discussions would result in definitive agreements or the completion of any transaction, we may devote a significant amount of our management's attention and resources to evaluating and pursuing a transaction or opportunity, which could negatively impact our operations. In addition, we may incur significant costs in connection with evaluating and pursuing other strategic opportunities, regardless of whether any transaction is completed. We cannot assure you that we would fully realize the potential benefit of any strategic alternative or transaction that we pursue.

***We may engage in acquisitions that could disrupt our business and harm our business, operating results or financial condition.***

We expect to make selective domestic and international acquisitions of, and investments in, businesses that offer complementary products, augment our market coverage and/or enhance our capabilities. We may also enter into strategic alliances or joint ventures to achieve these goals. We may not be able to identify suitable acquisition, investment, alliance or joint venture opportunities or consummate any such transactions or relationships on terms and conditions acceptable to us. Such transactions or relationships that we enter into may not be successful. In addition, acquisitions and investments outside of the United States involve unique risks related to integration of operations across different cultures and languages, currency risks and the particular economic, political and regulatory risks associated with specific countries.

These transactions or any other acquisitions or dispositions involve risks and uncertainties, which may have a material adverse effect on our business. The integration of acquired businesses may not be successful and could result in disruption to other parts of our business. In addition, the integration may require that we incur significant restructuring charges. To integrate acquired businesses, we must implement our management information systems, operating systems and internal controls, and assimilate and manage the personnel of the acquired operations. The difficulties of the integrations may be further complicated by such factors as geographic distances, lack of experience operating in the geographic market or industry sector of the acquired business, delays and challenges associated with integrating the business with our existing businesses, diversion of management's attention from daily operations of the business, potential loss of key employees and customers of the acquired business, the potential for deficiencies in internal controls at the acquired business, performance problems with the acquired business' technology, difficulties in entering markets in which we have no or limited direct prior experience, exposure to unanticipated liabilities of the acquired business, insufficient revenues to offset increased expenses associated with the acquisition, and our ability to achieve the growth prospects and synergies expected from any such acquisition. Even when an acquired business has already developed and marketed products and services, there can be no assurance that product or service enhancements will be made in a timely fashion or that all pre-acquisition due diligence will have identified all possible issues that might arise with respect to such acquired assets.

Any acquisition may also cause us to assume liabilities, record goodwill and non-amortizable intangible assets that will be subject to impairment testing and potential impairment charges, incur amortization expense related to certain intangible assets, increase our expenses and working capital requirements, and subject us to litigation, which would reduce our return on invested capital. Failure to manage and successfully integrate the acquisitions we make could materially harm our business and operating results.

Any future acquisitions may require additional debt or equity financing, which in the case of debt financing, will increase our leverage and, in the case of equity financing, would be dilutive to our existing stockholders. Any decline in our perceived credit-worthiness associated with an acquisition could adversely affect our ability to borrow and result in more restrictive borrowing terms. As a result of the foregoing, we also may not be able to complete acquisitions or strategic transactions in the future to the same extent as in the past, or at all. These and other factors could harm our ability to achieve anticipated levels of profitability at acquired operations or realize other anticipated benefits of an acquisition, and could adversely affect our business, financial condition and results of operations.

***Our geographic diversity subjects us to the risk of currency fluctuations.***

We conduct operations in many areas of the world, involving transactions denominated in a variety of currencies. We are subject to currency exchange rate risk to the extent that our costs are denominated in currencies other than those in which we earn revenues. In addition, because our financial statements are denominated in U.S. dollars, changes in currency exchange rates between the U.S. dollar and other currencies have had, and will continue to have, an impact on our results of operations. While we may enter into financial transactions to address these risks, there can be no assurance that currency exchange rate fluctuations will not adversely affect our results of operations, financial condition and cash flows. In addition, while the use of currency hedging instruments may provide us with protection from adverse fluctuations in currency exchange rates, by utilizing these instruments we potentially forego the benefits that might result from favorable fluctuations in currency exchange rates.

***If we are unable to maintain relationships with our raw material suppliers, we may incur higher supply costs or be unable to deliver products to our customers.***

In addition to water, the principal raw materials required to produce our products are aluminum cans and ends, PET bottles, caps and preforms, labels, cartons and trays, sweeteners, such as HFCS and sugar, and fruit and fruit concentrates. We rely upon our ongoing relationships with our key suppliers to support our operations.

We typically enter into annual or multi-year supply arrangements with our key suppliers, meaning that our suppliers are obligated to continue to supply us with materials for one-year or multi-year periods, at the end of which we must either renegotiate the contracts with those suppliers or find alternative sources for supply.

There can be no assurance that we will be able to either renegotiate contracts (with similar or more favorable terms) with these suppliers when they expire or, alternatively, if we are unable to renegotiate contracts with our key suppliers, there can be no assurance that we could replace them. We could also incur higher ingredient and packaging supply costs in renegotiating contracts with existing suppliers or replacing those suppliers, or we could experience temporary disruptions in our ability to deliver products to our customers, either of which could have a material adverse effect on our results of operations.

With respect to some of our key packaging supplies, such as aluminum cans and ends, and some of our key ingredients, such as sweeteners, we have entered into long-term supply agreements, the remaining terms of which range from 12 to 36 months, and therefore we expect to have a supply of those key packaging supplies and ingredients during such terms. In addition, the supply of specific ingredient and packaging materials could be adversely affected by many factors, including industry consolidation, energy shortages, governmental controls, labor disputes, natural disasters, transportation interruption, political instability, acts of war or terrorism and other factors.



***We have a significant amount of outstanding debt, which could adversely affect our financial health and future cash flows may not be sufficient to meet our obligations.***

As of March 29, 2014, after giving effect to this offering and the application of net proceeds therefrom for the repurchase of any and all of the outstanding 2018 Notes and the repayment of borrowings outstanding under the ABL Facility, our total indebtedness would have been \$552.6 million. Our present indebtedness and any future borrowings could have important adverse consequences to us and our investors, including:

- requiring a substantial portion of our cash flow from operations to make interest payments on this debt;
- making it more difficult to satisfy debt service and other obligations;
- increasing the risk of a future credit ratings downgrade of our debt, which would increase future debt costs;
- increasing our vulnerability to general adverse economic and industry conditions;
- reducing the cash flow available for share repurchases, to pay dividends, and to fund capital expenditures and other corporate purposes and to grow our business;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry;
- placing us at a competitive disadvantage to our competitors that may not be as highly leveraged as we are; and
- limiting our ability to borrow additional funds as needed or take advantage of business opportunities as they arise, pay cash dividends or repurchase common stock.

To the extent we become more leveraged, the risks described above would increase. In addition, our actual cash requirements in the future may be greater than expected. We cannot assure you that our business will generate sufficient cash flow from operations, or that future borrowings will be available to us in amounts sufficient to enable us to pay our indebtedness, including the notes, or to fund our other liquidity needs.

If we fail to generate sufficient cash flow from future operations to meet our debt service obligations, we may need to refinance all or a portion of our debt on or before maturity. We cannot assure you that we will be able to refinance any of our debt on attractive terms, commercially reasonable terms or at all. If we cannot service or refinance our indebtedness, we may have to take actions such as selling assets, seeking additional equity or reducing or delaying capital expenditures, strategic acquisitions, investments and alliances, any of which could impede the implementation of our business strategy, prevent us from entering into transactions that would otherwise benefit our business and/or have a material adverse effect on our financial condition and results of operations. Our future operating performance and our ability to service or refinance our debt will be subject to future economic conditions and to financial, business and other factors, many of which are beyond our control.

***Despite current indebtedness levels, we and our subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks associated with our substantial leverage.***

We will have the right to incur substantial additional indebtedness in the future. The terms of the agreements governing our indebtedness restrict, but do not in all circumstances, prohibit us from doing so. All existing and future borrowings under the ABL Facility will rank *pari passu* with the notes and the subsidiary guarantees and such borrowings will be secured by substantially all of our assets. Under the instruments governing our debt, we may incur substantial additional debt that ranks equal with the notes. In addition, the

indenture governing the notes would permit us to incur additional indebtedness under certain incurrence baskets without having to meet coverage ratio incurrence tests or other EBITDA thresholds. Under certain debt incurrence tests, the amount of total debt we could incur in the future under the indenture governing the notes could increase.

Any additional debt may be governed by indentures or other instruments containing covenants that could place restrictions on the operation of our business and the execution of our business strategy in addition to the restrictions on our business already contained in the agreements governing our existing debt. Because any decision to issue debt securities or enter into new debt facilities will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of any future debt financings and we may be required to accept unfavorable terms for any such financings.

***Our ABL Facility contains, and the indenture governing the notes offered in this offering will contain, various covenants limiting the discretion of our management in operating our business, which could prevent us from capitalizing on business opportunities and taking some corporate actions.***

Our ABL Facility imposes, and the indenture governing the notes offered in this offering will impose, significant operating and financial restrictions on us. These restrictions will limit or restrict, among other things, our ability and the ability of our restricted subsidiaries to:

- incur additional indebtedness;
- make restricted payments (including paying dividends on, redeeming, repurchasing or retiring our capital stock);
- make investments;
- create liens;
- sell assets;
- enter into agreements restricting our subsidiaries' ability to pay dividends, make loans or transfer assets to us;
- engage in transactions with affiliates; and
- consolidate, merge or sell all or substantially all of our assets.

These covenants are subject to important exceptions and qualifications and, with respect to the notes, are described under the heading "Description of Notes—Certain Covenants" in this offering memorandum. In addition, our ABL Facility also requires us, under certain circumstances, to maintain compliance with certain financial covenants. Our ability to comply with this covenant may be affected by events beyond our control, including those described in this "Risk Factors" section. A breach of any of the covenants contained in our ABL Facility, including our inability to comply with the financial covenant, could result in an event of default, which would allow the lenders under our ABL Facility to declare all borrowings outstanding to be due and payable, which would in turn trigger an event of default under the indenture governing the notes and, potentially, our other indebtedness. At maturity or in the event of an acceleration of payment obligations, we would likely be unable to pay our outstanding indebtedness with our cash and cash equivalents then on hand. We would, therefore, be required to seek alternative sources of funding, which may not be available on commercially reasonable terms, terms as favorable as our current agreements or at all, or face bankruptcy. If we are unable to refinance our indebtedness or find alternative means of financing our operations, we may be required to curtail our operations, face bankruptcy, or take other actions that are inconsistent with our current business practices or strategy.

***A portion of our debt may be variable rate debt, and changes in interest rates could adversely affect us by causing us to incur higher interest costs with respect to such variable rate debt.***

Our ABL Facility subjects us to interest rate risk. The rate at which we pay interest on amounts borrowed under such facility fluctuates with changes in interest rates and our debt leverage. Accordingly, with respect to any amounts from time to time outstanding under our ABL Facility, we are and will be exposed to changes in interest rates. If we are unable to adequately manage our debt structure in response to changes in the market, our interest expense could increase, which would negatively impact our financial condition and results of operations. The outstanding borrowings under the ABL Facility as of March 29, 2014 were \$130.9 million. A 1% increase in interest rates would result in increased interest expense of \$1.3 million on the current outstanding borrowings under our ABL Facility. If the full ABL Facility was outstanding, a 1.0% increase in the interest rate would result in interest expense of \$3.0 million.

***Our financial results may be negatively impacted by global financial events.***

In recent years, global financial events have resulted in the consolidation, failure or near failure of a number of institutions in the banking, insurance and investment banking industries and have substantially reduced the ability of companies to obtain financing. These events also adversely affected the financial markets. These events could continue to have a number of different effects on our business, including:

- a reduction in consumer spending, which could result in a reduction in our sales volume;
- a negative impact on the ability of our customers to timely pay their obligations to us or our vendors to timely supply materials, thus reducing our cash flow;
- an increase in counterparty risk;
- an increased likelihood that one or more members of our banking syndicate may be unable to honor its commitments under our ABL Facility; and
- restricted access to capital markets that may limit our ability to take advantage of business opportunities, such as acquisitions.

Other events or conditions may arise or persist directly or indirectly from the global financial events that could negatively impact our business.

***We may not fully realize the expected cost savings and/or operating efficiencies from our restructuring activities.***

We have in the past implemented, and may in the future implement, restructuring activities to support the implementation of key strategic initiatives designed to achieve long-term sustainable growth. These activities are intended to maximize our operating effectiveness and efficiency and to reduce our costs. We cannot be assured that we will achieve or sustain the targeted benefits under these programs or that the benefits, even if achieved, will be adequate to meet our long-term growth expectations. In addition, the implementation of key elements of these activities, may have an adverse impact on our business, particularly in the near-term.

***Substantial disruption to production at our beverage concentrates or other beverage production facilities could occur.***

A disruption in production at our beverage concentrates production facility, which manufactures almost all of our concentrates, could have a material adverse effect on our business. In addition, a disruption could occur at any of our other facilities or those of our suppliers, bottlers or distributors. The disruption could occur for many reasons, including fire, natural disasters, weather, manufacturing problems, disease, strikes, transportation interruption, government regulation or terrorism. Alternative facilities with sufficient capacity or capabilities may not be available, may cost substantially more or may take a significant time to start production, each of which could negatively affect our business and financial performance.

***Our success depends, in part, on our intellectual property, which we may be unable to protect.***

We possess certain intellectual property that is important to our business. This intellectual property includes trade secrets, in the form of the concentrate formulas for most of the beverages that we produce, and trademarks for the names of the beverages that we sell. While we own certain of the trademarks used to identify our beverages, other trademarks are used through licenses from third parties or by permission from our customers. Our success depends, in part, on our ability to protect our intellectual property.

To protect this intellectual property, we rely principally on registration of trademarks, contractual responsibilities and restrictions in agreements (such as indemnification, nondisclosure and confidentiality agreements) with employees, consultants and customers, and on common law and statutory protections afforded to trademarks, trade secrets and proprietary “know-how.” In addition, we vigorously protect our intellectual property against infringements using any and all legal remedies available. Notwithstanding our efforts, we may not be successful in protecting our intellectual property for a number of reasons, including:

- our competitors may independently develop intellectual property that is similar to or better than ours;
- employees, consultants or customers may not abide by their contractual agreements and the cost of enforcing those agreements may be prohibitive, or those agreements may prove to be unenforceable or more limited than anticipated;
- foreign intellectual property laws may not adequately protect our intellectual property rights; and
- our intellectual property rights may be successfully challenged, invalidated or circumvented.

If we are unable to protect our intellectual property, our competitive position would weaken and we could face significant expense to protect or enforce our intellectual property rights. At March 29, 2014, we had \$45.0 million of Rights (as defined below) and \$6.9 million of trademarks recorded as intangible assets.

Occasionally, third parties may assert that we are, or may be, infringing on or misappropriating their intellectual property rights. In these cases, we intend to defend against claims or negotiate licenses when we consider these actions appropriate. Intellectual property cases are uncertain and involve complex legal and factual questions. If we become involved in this type of litigation, it could consume significant resources and divert our attention from business operations.

If we are found to infringe on the intellectual property rights of others, we could incur significant damages, be enjoined from continuing to manufacture, market or use the affected product, or be required to obtain a license to continue manufacturing or using the affected product. A license could be very expensive to obtain or may not be available at all. Similarly, changing products or processes to avoid infringing the rights of others may be costly or impracticable.

***Our products may not meet health and safety standards or could become contaminated and we could be liable for injury, illness or death caused by consumption of our products.***

We have adopted various quality, environmental, health and safety standards. However, our products may still not meet these standards or could otherwise become contaminated. A failure to meet these standards or contamination could occur in our operations or those of our bottlers, distributors or suppliers. This could result in expensive production interruptions, recalls and liability claims. We may be liable to our customers if the consumption of any of our products causes injury, illness or death. Moreover, negative publicity could be generated from false, unfounded or nominal liability claims or limited recalls. Any of these failures or occurrences could have a material adverse effect on our results of operations or cash flows.

***Litigation or legal proceedings could expose us to significant liabilities and damage our reputation.***

We are party to various litigation claims and legal proceedings. We evaluate these claims and proceedings to assess the likelihood of unfavorable outcomes and estimate, if possible, the amount of potential losses. We may establish a reserve as appropriate based upon assessments and estimates in accordance with our accounting policies. We base our assessments, estimates and disclosures on the information available to us at the time and rely on legal and management judgment. Actual outcomes or losses may differ materially from assessments and estimates. Actual settlements, judgments or resolutions of these claims or proceedings may negatively affect our business and financial performance.

***Changes in the legal and regulatory environment in the jurisdictions in which we operate could increase our costs or reduce our revenues, adversely affect demand for our products or result in litigation.***

As a producer of beverages, we must comply with various federal, state, provincial, local and foreign laws relating to production, packaging, quality, labeling and distribution, including, in the United States, those of the federal Food, Drug and Cosmetic Act, the Fair Packaging and Labeling Act, the Federal Trade Commission Act, the Nutrition Labeling and Education Act and California Proposition 65. We are also subject to various federal, state, provincial, local and foreign environmental laws and workplace regulations. These laws and regulations include, in the United States, the Occupational Safety and Health Act, the Unfair Labor Standards Act, the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Federal Motor Carrier Safety Act, laws governing equal employment opportunity, customs and foreign trade laws and regulations, laws relating to the maintenance of fuel storage tanks, laws relating to water consumption and treatment, and various other federal statutes and regulations. These laws and regulations may change as a result of political, economic, or social events. Such regulatory changes may include changes in food and drug laws, laws related to advertising, accounting standards, taxation requirements, competition laws and environmental laws, including laws relating to the regulation of water rights and treatment. Changes in laws, regulations or government policy and related interpretations may alter the environment in which we do business, which may impact our results or increase our costs or liabilities.

A number of states have passed laws setting forth warning or labeling requirements relating to products made for human consumption. For example, the California law known as Proposition 65 requires that a specific warning appear on any product sold in California containing a substance listed by that state as having been found to cause cancer or reproductive toxicity. This law, and others like it, exposes all food and beverage producers to the possibility of having to provide warnings on their products. The detection of even a trace amount of a listed substance can subject an affected product to the requirement of a warning label, although products containing listed substances that occur naturally or that are contributed to such products solely by a municipal water supply are generally exempt from the warning requirement. From time to time over the past several years, certain of our customers have received notices alleging that the labeling requirements of the relevant state regulation would apply to products manufactured by us and sold by them. There can be no assurance that we will not be adversely affected by actions against our customers or us relating to Proposition 65 or similar “failure to warn” laws: were any such claim to be pursued or succeed, we might in some cases be required to indemnify our customers for damages, and our products might be required to bear warning labels in order to be sold in certain states. Any negative media attention, adverse publicity or action arising from allegations of violations could adversely impact consumer perceptions of our products and harm our business.

***Taxes on CSDs and other drinks could have an adverse effect on our business.***

Federal, state, local and foreign governments have considered or have enacted taxes on soda and other sugary drinks, as well as energy products. Any such taxes could negatively impact consumer demand for our products and have an adverse effect on our revenues.

***We are not in compliance with the requirements of the Ontario Environmental Protection Act (“OEPA”) and, if the Ontario government seeks to enforce those requirements or implements modifications to them, we could be adversely affected.***

Certain regulations under the OEPA provide that a minimum percentage of a bottler’s soft drink sales within specified areas in Ontario must be made in refillable containers. The penalty for non-compliance is a fine of \$50,000 per day beginning when the first offense occurs and continuing until the first conviction, and then increasing to \$100,000 per day for each subsequent conviction. These fines may be increased to equal the amount of monetary benefit acquired by the offender as a result of the commission of the offense. We, and we believe other industry participants, are currently not in compliance with the requirements of the OEPA. We do not expect to be in compliance with these regulations in the foreseeable future. Ontario is not enforcing the OEPA at this time, but if it chose to enforce the OEPA in the future, we could incur fines for non-compliance and the possible prohibition of sales of soft drinks in non-refillable containers in Ontario. We estimate that approximately 3% of our Canada operating segment sales would be affected by the possible limitation on sales of soft drinks in non-refillable containers in Ontario if the Ontario Ministry of the Environment initiated an action to enforce the provisions of the OEPA.

***Adverse weather conditions could affect our supply chain and reduce the demand for our product.***

Severe weather conditions and natural disasters, such as freezes, frosts, floods, hurricanes, tornados, droughts or earthquakes and crop diseases may affect our facilities and our supply of raw materials such as fruit. If the supply of any of our raw materials is adversely affected by weather conditions, it may result in increased raw material costs and there can be no assurance that we will be able to obtain sufficient supplies from other sources. In addition, the sales of our products are influenced to some extent by weather conditions in the markets in which we operate. Unusually cold or rainy weather during the summer months may reduce the demand for our products and contribute to lower revenues, which could negatively impact our profitability.

***Global or regional catastrophic events could impact our operations and financial results.***

Our business can be affected by large-scale terrorist acts, especially those directed against the United States or other major industrialized countries in which we do business, major natural disasters, or widespread outbreaks of infectious diseases. Such events could impair our ability to manage our business, could disrupt our supply of raw materials, and could impact production, transportation and delivery of products. In addition, such events could cause disruption of regional or global economic activity, which can affect consumers’ purchasing power in the affected areas and, therefore, reduce demand for our products.

***Our success depends in part upon our ability to recruit, retain and prepare succession plans for our CEO, CFO, senior management and key employees.***

The performance of our Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), senior management and other key employees is critical to our success. We plan to continue to invest time and resources in developing our senior management and key employee teams. Our long-term success will depend on our ability to recruit and retain capable senior management and other key employees, and any failure to do so could have a material adverse effect on our future operating results and financial condition. Further, if we fail to adequately plan for the succession of our CEO, CFO, senior management and other key employees, our operating results could be adversely affected.

***Changes in future business conditions could cause business investments and/or recorded goodwill, indefinite life intangible assets or other intangible assets to become impaired, resulting in substantial losses and write-downs that would negatively impact our results of operations.***

As part of our overall strategy, we will, from time to time, make investments in other businesses. These investments are made upon careful target analysis and due diligence procedures designed to achieve a desired return or strategic objective. These procedures often involve certain assumptions and judgment in determining



investment amount or acquisition price. After acquisition or investment, unforeseen issues could arise that adversely affect anticipated returns or that are otherwise not recoverable as an adjustment to the purchase price. Even after careful integration efforts, actual operating results may vary significantly from initial estimates.

Goodwill accounted for approximately \$136.5 million of our recorded total assets as of March 29, 2014. We evaluate the recoverability of recorded goodwill amounts annually, or when evidence of potential impairment exists. The annual impairment test is based on several factors requiring judgment and certain underlying assumptions. Our only intangible asset with an indefinite life relates to the 2001 acquisition of intellectual property from Royal Crown Company, Inc., including the right to manufacture our concentrates, with all related inventions, processes, technologies, technical and manufacturing information, know-how and the use of the Royal Crown brand outside of North America and Mexico (the “Rights”). This asset, which has a net book value of \$45.0 million, is more fully described in Note 1 to the consolidated financial statements included in our Form 10-K.

As of March 29, 2014, intangible and other assets, net of accumulated amortization, were \$247.1 million, which consisted principally of \$205.9 million of customer relationships that arose from acquisitions, \$9.3 million of financing costs, \$20.9 million of information technology assets, and trademarks of \$6.9 million. Customer relationships are amortized on a straight-line basis for the period over which we expect to receive economic benefits, which is up to 15 years. We review the estimated useful life of these intangible assets annually, taking into consideration the specific net cash flows related to the intangible asset, unless it is required more frequently due to a triggering event such as the loss of a customer. The permanent loss of any customer included in the intangible asset would result in impairment in the value of the intangible asset or accelerated amortization and could lead to an impairment of fixed assets that were used to service that client. Principally, a decrease in expected reporting segment cash flows, changes in market conditions, loss of key customers and a change in our imputed cost of capital may indicate potential impairment of recorded goodwill or the Rights. For additional information on accounting policies we have in place for goodwill impairment, see our discussion under “Critical Accounting Policies and Estimates” in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” of the Form 10-K and Note 1, “Summary of Significant Accounting Policies,” in the notes to the consolidated financial statements included in the Form 10-K.

***We may not be able to renew collective bargaining agreements on satisfactory terms, or we could experience strikes.***

As of March 29, 2014, 788 of our employees were covered by collective bargaining agreements in the United States, Canada, the United Kingdom and Mexico. These agreements typically expire every three to five years at various dates. We may not be able to renew our collective bargaining agreements on satisfactory terms or at all. This could result in strikes or work stoppages, which could impair our ability to manufacture and distribute our products and result in a substantial loss of sales. The terms of existing or renewed agreements could also significantly increase our costs or negatively affect our ability to increase operational efficiency.

***We depend on key information systems and third-party service providers.***

We depend on key information systems to accurately and efficiently transact our business, provide information to management and prepare financial reports. We have typically relied on third-party providers for the majority of our key information systems and business processing services, including hosting our primary data center. In particular, we are in the process of implementing a new SAP software platform to assist us in the management of our business and have also reorganized certain processes within our finance and accounting departments. As a part of the reorganization, we have outsourced certain back office transactional finance processes. If we fail to successfully implement these projects or if the projects do not result in increased operational efficiencies, our operations may be disrupted and our operating expenses could increase, which could adversely affect our financial results. In addition, these systems and services are vulnerable to interruptions or other failures resulting from, among other things, natural disasters, terrorist attacks, software, equipment or



telecommunications failures, processing errors, computer viruses, hackers, other security issues or supplier defaults. Security, backup and disaster recovery measures may not be adequate or implemented properly to avoid such disruptions or failures. Any disruption or failure of these systems or services could cause substantial errors, processing inefficiencies, security breaches, inability to use the systems or process transactions, loss of customers or other business disruptions, all of which could negatively affect our business and financial performance.

***We also face other risks that could adversely affect our business, results of operations or financial condition, which include:***

- any requirement to restate financial results in the event of inappropriate application of accounting principles or otherwise;
- any event that could damage our reputation;
- failure of our processes to prevent and detect unethical conduct of employees;
- a significant failure of internal controls over financial reporting;
- failure of our prevention and control systems related to employee compliance with internal policies and regulatory requirements; and
- failure of corporate governance policies and procedures.

#### **Risks Related to the Aimia Foods Acquisition**

***We may not realize the expected benefits of the Aimia Foods Acquisition because of integration difficulties and other challenges.***

The success of the Aimia Foods Acquisition will depend, in part, on our ability to realize all or some of the anticipated benefits from integrating Aimia Foods' business with our existing businesses. The integration process may be complex, costly and time-consuming. The difficulties of integrating the operations of Aimia Foods' business include, among others:

- failure to implement our business plan for the combined business;
- unanticipated issues in integrating manufacturing, logistics, information, communications and other systems;
- possible inconsistencies in standards, controls, procedures and policies, and compensation structures between Aimia Foods' structure and our structure;
- failure to retain key customers and suppliers;
- unanticipated changes in applicable laws and regulations;
- failure to retain key employees;
- operating risks inherent in Aimia Foods' business and our business; and
- unanticipated issues, expenses and liabilities.

We may not be able to maintain the levels of revenue, earnings or operating efficiency that each of Cott and Aimia Foods had achieved or might achieve separately. In addition, we may not accomplish the integration

of Aimia Foods' business smoothly, successfully or within the anticipated costs or timeframe. If we experience difficulties with the integration process, the anticipated benefits of the Aimia Foods Acquisition may not be realized fully, or at all, or may take longer to realize than expected.

***We face risks associated with our Purchase Agreement in connection with the Aimia Foods Acquisition.***

In connection with the Aimia Foods Acquisition, we will be subject to all of the liabilities of Aimia Foods that were not satisfied on or prior to the closing date. There may be liabilities that we underestimated or did not discover in the course of performing our due diligence investigation of Aimia Foods. Under the Share Purchase Agreement, dated as of May 30, 2014 (the "Purchase Agreement"), by and among Robert Unsworth and others, Cott Ventures Limited, Cott Corporation and Cott Beverages Limited, the sellers have agreed to provide us with a limited set of warranties and indemnities in relation to identified risks. Our sole remedy from the sellers for any breach of those warranties is an action for damages for a warranty claim. Damages resulting from a breach of warranty or indemnity could have a material and adverse effect on our financial condition and results of operations.

***As a private company, Aimia Foods may not have had in place an adequate system of internal control over financial reporting that we will need to manage that business effectively as part of a public company.***

Pursuant to the Purchase Agreement, we acquired the entire issued share capital of Aimia Foods Holdings Limited and its subsidiaries. None of these companies have previously been subject to periodic reporting as a public company. There can be no assurance that Aimia Foods had in place an effective system of internal control over financial reporting similar to that which is required for public companies. Establishing, testing and maintaining an effective system of internal control over financial reporting requires significant resources and time commitments on the part of our management and our finance and accounting staff, may require additional staffing and infrastructure investments, and would increase our costs of doing business. Moreover, if we discover aspects of Aimia Foods' internal controls that need improvement, we cannot be certain that our remedial measures will be effective. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could harm our operating results or increase our risk of material weaknesses in internal controls.

**Risks Related To This Offering**

***Your right to receive payments on the notes and the guarantees will be effectively subordinated to our secured debt to the extent of the value of the assets securing that debt.***

The notes and the guarantees will be effectively subordinated to claims of existing and future secured creditors to the extent of the value of the assets securing such claims. Assuming we had completed this offering on March 29, 2014, we estimate that we would have had approximately \$27.6 million of secured borrowings outstanding, which excludes outstanding letters of credit but would have included \$10.9 million outstanding under the ABL Facility. The indenture governing the notes will permit us to incur additional secured indebtedness. In the event of a liquidation, dissolution, reorganization, bankruptcy or any similar proceeding, holders of our secured obligations will have claims that are prior to claims of the holders of the notes or the guarantees with respect to the assets securing those obligations, which are substantially all of our assets. Accordingly, there may not be sufficient funds remaining to pay amounts due on all or any of the notes.

***Your right to receive payments on the notes could be adversely affected if any of our non-guarantor subsidiaries declares bankruptcy, liquidates or reorganizes.***

Some, but not all, of our subsidiaries will guarantee the notes. In the event of a bankruptcy, liquidation or reorganization of any of the non-guarantor subsidiaries, holders of their debt and their trade creditors will generally be entitled to payment of their claims from assets of those subsidiaries before any assets are made

available for distribution to us. Assuming we had completed this offering on March 29, 2014, after giving effect to the guarantee of the notes by our subsidiary guarantors, the notes would have been structurally subordinated to approximately \$11.5 million of debt and other liabilities (including trade payables) of these non-guarantor subsidiaries. The non-guarantor subsidiaries generated approximately 7.0% and 6.8% of our consolidated revenues for the twelve months ended December 28, 2013 and three months ended March 29, 2014, respectively, and held approximately 6.2% of our consolidated assets as of March 29, 2014.

***Certain of our subsidiaries will be classified as unrestricted subsidiaries and will not be subject to any of the covenants in the indenture governing the notes, and we may not be able to rely on the cash flow or assets of those unrestricted subsidiaries to pay our indebtedness.***

Unrestricted subsidiaries will not be subject to the covenants under the indenture governing the notes. Unrestricted subsidiaries may enter into financing arrangements that limit their ability to make loans or other payments to fund payments in respect of the notes. Accordingly, we may not be able to rely on the cash flow or assets of unrestricted subsidiaries to pay any of our indebtedness, including the notes. The unrestricted subsidiaries had assets of approximately \$24.9 million as of March 29, 2014, and revenues of approximately \$119.4 million for the year ended December 28, 2013 and \$27.3 million for the three months ended March 29, 2014.

***The trading prices for the notes will be directly affected by many factors, including our credit rating.***

Credit rating agencies continually revise their ratings for companies they follow, including us. Any ratings downgrade could adversely affect the trading price of the notes, or the trading market for the notes, to the extent a trading market for the notes develops. The condition of the financial and credit markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future and any fluctuation may impact the trading price of the notes.

***We may not have the ability to raise the funds necessary to finance a change of control offer if required by the indenture for the notes or the terms of our other indebtedness.***

Upon the occurrence of certain change of control events, we will be required to offer to purchase all outstanding notes and other outstanding debt. A change of control event under the indenture governing the notes could also constitute a change of control under the ABL Facility, which could result in the acceleration of the indebtedness outstanding thereunder. Any of our future debt agreements may contain similar restrictions and provisions. If a change of control were to occur, we cannot assure you that we would have sufficient funds to pay the purchase price for all the notes tendered by the holders or such other indebtedness and under the indenture governing the notes we may not be permitted to repurchase such other indebtedness, which could result in an event of default under such indebtedness. Moreover, under the indenture governing the notes, certain important corporate events, such as leveraged recapitalizations that would increase the level of our indebtedness, would not constitute a “change of control” and thus would not give rise to any repurchase rights.

Thus, there can be no assurance that in the event of a change of control we will have sufficient funds to satisfy our obligations with respect to any or all of the tendered notes. See “Description of Notes—Repurchase at the Option of Holders—Change of Control.”

***Certain laws may allow courts, under specific circumstances, to avoid guarantees and require note holders to return payments received from guarantors.***

Under certain bankruptcy and fraudulent transfer laws, a court could avoid a guarantee or subordinate a guarantee to all of our other debts or all other debts of a guarantor if, among other things, the guarantor, at the time it incurred the indebtedness evidenced by its guarantee, received less than reasonably equivalent value or fair consideration for the incurrence of such indebtedness and:

- the guarantor was insolvent or rendered insolvent by reason of such incurrence;

- the guarantor was engaged in a business or transaction for which our or the guarantor's remaining assets constituted unreasonably small capital; or
- the guarantor intended to incur, or believed that it would incur, debts beyond our or its ability to pay such debts as they mature.

The indenture governing the notes will limit the liability of each guarantor on its guarantee to the maximum amount that such guarantor could incur without risk that its guarantee would be subject to avoidance as a fraudulent transfer. However, this limitation may not protect such guarantees from fraudulent transfer challenges or, if it does, that the remaining amount due and collectible under the guarantees would suffice, if necessary, to pay the notes in full when due.

A legal challenge to the obligations under any guarantee on fraudulent conveyance grounds could focus on any benefits received in exchange for the incurrence of those obligations. We believe that each of our subsidiaries making a guarantee received reasonably equivalent value for incurring the guarantee, but a court may disagree with our conclusion or elect to apply a different standard in making its determination. A court could thus void the obligations under a guarantee, subordinate it to a guarantor's other debt or take other action detrimental to the holders of the notes. The measures of insolvency for purposes of the fraudulent transfer laws vary depending on the law applied in the proceeding to determine whether a fraudulent transfer has occurred. Generally, however, an entity would be considered insolvent if:

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

***You may only transfer the notes in a transaction registered under, or exempt from the registration requirements of, the Securities Act.***

The notes have not been registered under the Securities Act or any state securities laws and, unless so registered, may not be re-offered or re-sold except pursuant to an exemption from the registration requirements of the Securities Act and applicable state securities laws. See "Transfer Restrictions." Under the registration rights agreement applicable to the notes, we will be required to use commercially reasonable efforts to commence an exchange offer to exchange the notes and guarantees within a specified period of time for equivalent securities under the Securities Act or to register the resale of the notes and guarantees under the Securities Act. However, we cannot assure you that we will be successful in having any such registration statement declared effective. See "Exchange Offer; Registration Rights."

***There is no public market for the notes and we do not know if a market will ever develop or, if a market does develop, whether it will be sustained.***

The notes are a new issue of securities and there is no existing trading market for the notes. Although the initial purchasers have informed us that they intend to make a market in the notes, they have no obligation to do so and may discontinue making a market at any time without notice. Accordingly, we cannot assure you that a liquid market will develop or continue for the notes, that you will be able to sell your notes at a particular time or at the price that you desire. We do not intend to apply for listing or quotation of the notes on any securities exchange or stock market. The liquidity of any market for the notes will depend on a number of factors, including:

- the number of holders of the notes;

- our operating performance and financial condition;
- the market for similar securities;
- the interest of securities dealers in making a market in the notes; and
- prevailing interest rates.

***The trading price of the notes may be volatile.***

Historically, the market for non-investment grade debt has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the notes. We cannot assure you that any such disruptions may not adversely affect the prices at which you may sell your notes. The notes may trade at a discount from the initial offering price of the notes, depending upon prevailing interest rates, the market for similar notes, our performance and other factors.

## USE OF PROCEEDS

We intend to use the net proceeds from this offering to repurchase or redeem any and all of the outstanding 2018 Notes, to repay the loans outstanding under the ABL Facility, to pay related fees and expenses and for general corporate purposes.

The estimated sources and uses of funds for the transactions, assuming these transactions had closed on March 29, 2014, are shown in the table below. Actual amounts will vary from estimated amounts depending on several factors, including changes in our debt balances and net working capital from March 29, 2014 to the closing of these transactions.

<u>Sources</u>	<u>(In millions)</u>	<u>Uses</u>	<u>(In millions)</u>
Senior notes offered hereby . . . . .	\$525.0	Repurchase of 2018 Notes(1) . . . . .	\$375.0
		Tender premium . . . . .	21.0
		Transaction costs(2) . . . . .	9.0
		Repay ABL Facility(3) . . . . .	120.0
Total . . . . .	<u>\$525.0</u>	Total . . . . .	<u>\$525.0</u>

- (1) Assumes all of the outstanding 2018 Notes are tendered prior to the Consent Expiration (as defined in the Offer to Purchase). Excludes accrued and unpaid interest and premiums on the 2018 Notes relating to the repurchase of the 2018 Notes, as of March 29, 2014. Certain of the initial purchasers or their affiliates may hold 2018 Notes and may receive a portion of the proceeds of the offering of the notes offered hereby to the extent such 2018 Notes are repurchased by the Company in the Tender Offer. See “Plan of Distribution—Other Relationships.” If the Tender Offer is not consummated or if we purchase less than all outstanding 2018 Notes in the Tender Offer, we intend to redeem any outstanding 2018 Notes.
- (2) Reflects our estimate of fees and expenses associated with this offering, the repurchase of and any all of the 2018 Notes and the repayment of the loans outstanding under the ABL Facility, including financing fees, advisory fees and other transaction costs.
- (3) Approximately \$66 million of borrowings under our ABL Facility were used to fund the acquisition of Aimia Foods. Certain of the initial purchasers or their affiliates are lenders under our ABL Facility. As a result, affiliates of the initial purchasers may receive a portion of the proceeds of the notes. See “Plan of Distribution—Other Relationships.”

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of March 29, 2014:

- on an actual basis; and
- on an as adjusted basis after giving effect to this offering and the application of net proceeds therefrom for the repurchase or redemption of any and all of the outstanding 2018 Notes and the repayment of the loans outstanding under the ABL Facility.

The actual sources and uses of the funds will vary from estimated amounts depending on several factors, including (i) the amount of net proceeds that we receive from this offering, (ii) changes in our debt balances and net working capital from March 29, 2014 to the closing of these transactions. You should read this table in conjunction with the sections entitled “Use of Proceeds,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contained in our Form 10-K and our consolidated financial statements and related notes included or incorporated by reference herein.

	As of March 29, 2014	
	Actual	As Adjusted
	<i>(In millions, except share information) (unaudited)</i>	
Cash and cash equivalents(1) . . . . .	\$ 40.6	\$ 40.6
Debt:		
ABL facility(2) . . . . .	\$ 130.9	\$ 10.9
GE term loan . . . . .	9.9	9.9
Capital leases and other debt financing . . . . .	6.8	6.8
Senior notes offered hereby . . . . .	—	525.0
2018 notes . . . . .	375.0	—
Total debt . . . . .	522.6	552.6
Equity:		
Capital stock, no par value, 94,325,432 shares issued . . . . .	393.6	393.6
Additional paid-in-capital . . . . .	44.2	44.2
Retained earnings . . . . .	167.3	142.3
Accumulated other comprehensive loss . . . . .	(18.5)	(18.5)
Non-controlling interests . . . . .	8.6	8.6
Total equity(3) . . . . .	595.2	570.2
Total capitalization . . . . .	\$1,117.8	\$1,122.8

- (1) This does not reflect the \$14.0 million in cash and cash equivalents used to fund the acquisition of Aimia Foods.
- (2) This does not reflect letters of credit outstanding under the ABL Facility. This does not reflect the incremental \$66.0 million of borrowings under our ABL Facility used to fund the acquisition of Aimia Foods, which is being repaid with the proceeds of this offering. As of March 29, 2014, on an as adjusted basis we would have had \$261.1 million of availability under the ABL Facility, net of \$7.5 million of outstanding letters of credit.
- (3) This does not give effect to the acquisition of Aimia Foods.



## RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the unaudited consolidated ratio of earnings to fixed charges for the periods shown:

	<u>Three Months Ended</u>		<u>Year Ended</u>				
	<u>March 29, 2014</u>	<u>March 30, 2013</u>	<u>Dec. 28, 2013</u>	<u>Dec. 29, 2012</u>	<u>Dec. 31, 2011</u>	<u>Jan. 1, 2011</u>	<u>Jan. 2, 2010</u>
Ratio of earnings to fixed charges(a) . . . . .	(b)	1.0	1.3	1.8	1.6	2.7	2.6

- (a) We compute the ratio of earnings to fixed charges by dividing (i) earnings (loss), which consists of net income from continuing operations before income taxes plus fixed charges and amortization of capitalized interest less interest capitalized during the period and adjusted for undistributed earnings in equity investments, by (ii) fixed charges, which consist of interest expense, capitalized interest and the portion of rental expense under operating leases estimated to be representative of the interest factor.

Ratios of earnings to combined fixed charges and preferred stock dividends requirements are not presented because there was no outstanding preferred stock in any of the periods indicated.

- (b) The ratio of earnings to fixed charges was less than 1:1 for the three months ended March 29, 2014. In order to achieve a ratio of earnings to fixed charges of 1:1, we would have had to generate an additional \$4.8 million in pre-tax earnings for the three months ended March 29, 2014.

## DESCRIPTION OF OTHER INDEBTEDNESS

*The following is a summary of certain of our indebtedness that is outstanding. To the extent such summary contains descriptions of our ABL Facility, the 2018 Notes, and the indenture governing the 2018 Notes, such descriptions do not purport to be complete and are qualified in their entirety by reference to those and related documents, copies of which have been filed with the SEC and which we will provide you upon request. See “Where You Can Find More Information” and “Incorporation by Reference of Certain Documents.”*

### ABL Facility

On March 31, 2008, we entered into our ABL Facility with various lenders led by JPMorgan Chase Bank, N.A. to provide financing for our operating segments in North America, the U.K. and Mexico. Cott Corporation, Cott Beverages Inc. and Cott Beverages Limited are borrowers under our ABL Facility. The debt under our ABL Facility is guaranteed by most of our United States, United Kingdom, Canadian and Mexican subsidiaries and is secured by substantially all of the assets of the borrowers and guarantors.

In connection with the Cliffstar Acquisition, we refinanced the ABL Facility on August 17, 2010 to, among other things, provide for the Cliffstar Acquisition, the issuance of \$375.0 million of the 2018 Notes and the application of net proceeds therefrom, the underwritten public offering of 13,340,000 common shares at a price of \$5.67 per share and the application of net proceeds therefrom and to increase the amount available for borrowings to \$275.0 million.

On July 19, 2012, we amended the ABL Facility to, among other things, extend the maturity date to July 19, 2017. We incurred \$1.2 million of financing fees in connection with the amendment of the ABL Facility. This amendment was considered to be a modification of the original agreement under generally accepted accounting principles.

On October 22, 2013, we amended the ABL Facility to, among other things, (1) provide for an increase in the lenders’ commitments under the ABL Facility to \$300.0 million, as well as to increase the accordion feature, which permits us to increase the lenders’ commitments under the ABL Facility to \$350.0 million, subject to certain conditions, (2) extend the maturity date to the earliest of (i) October 22, 2018 or (ii) March 1, 2018, if we have not redeemed, repurchased or refinanced the 2018 Notes by February 15, 2018, and (3) provide for greater flexibility under certain covenants. We incurred approximately \$0.7 million of financing fees in connection with the amendment of the ABL Facility. This amendment was considered to be a modification of the original agreement under generally accepted accounting principles.

The financing fees incurred in connection with the refinancing of the ABL Facility on August 17, 2010, along with the financing fees incurred in connection with the amendments of the ABL Facility on July 19, 2012 and on October 22, 2013, are being amortized using the straight-line method over the duration of the amended ABL Facility. On May 28, 2014, we amended the ABL Facility to increase our ability to incur unsecured debt and earnout consideration for permitted acquisitions, as well as to allow us to add additional borrowers and to designate additional guarantors to be included under the borrowing base.

The effective interest rate as of March 29, 2014 on LIBOR and Prime loans is based on average aggregate availability as follows:

<u>Average Aggregate Availability</u> <i>(in millions of US. dollars)</i>	<u>ABR Spread</u>	<u>Canadian Prime Spread</u>	<u>Eurodollar Spread</u>	<u>CDOR Spread</u>	<u>LIBOR Spread</u>
Over \$150 .....	0.25%	0.25%	1.75%	1.75%	1.75%
\$75—\$150 .....	0.50%	0.50%	2.00%	2.00%	2.00%
Under \$75 .....	0.75%	0.75%	2.25%	2.25%	2.25%

As of March 29, 2014, we had \$130.9 million of outstanding borrowings under the ABL Facility. The commitment fee was 0.375% per annum of the unused commitment, which, taking into account \$7.5 million of letters of credit, was \$141.1 million as of March 29, 2014.

In connection with this offering, we intend to repay \$120.0 million of the outstanding loans under the ABL Facility.

#### **8.125% Senior Notes due 2018**

On August 17, 2010, we issued the 2018 Notes. Most of our United States, Canadian and United Kingdom subsidiaries guarantee the 2018 Notes. The interest on the 2018 Notes is payable semi-annually on March 1 and September 1 of each year.

We incurred \$8.6 million of financing fees in connection with the issuance of the 2018 Notes. The financing fees are being amortized using the effective interest method over an eight-year period, which represents the term to maturity of the 2018 Notes.

In connection with this offering, we have commenced a tender offer to repurchase all of the outstanding 2018 Notes. In connection with the Tender Offer, we are also seeking to eliminate substantially all of the restrictive covenants in the indenture governing the 2018 Notes through a Consent Solicitation as described in the Offer to Purchase. However, no assurances can be made that such a Tender Offer will be completed or that we will be able to repurchase any or all of the outstanding 2018 Notes. If the Tender Offer is not consummated or if we purchase less than all outstanding 2018 Notes in the Tender Offer, we intend to redeem any outstanding 2018 Notes.

#### **GE Term Loan**

In January 2008, we entered into a capital lease finance arrangement with General Electric Capital Corporation (“GE Capital”) for the lease of equipment. In September 2013, we purchased the equipment subject to the lease for an aggregate purchase price of \$10.7 million, with the financing for such purchase provided by GE Capital at 5.23% interest.

## DESCRIPTION OF NOTES

The following is a description of the        % senior notes due 2022 (the “Notes”). The Notes will be issued by Cott Beverages, Inc. (the “Issuer”). In this Description of Notes, the term “Issuer” refers to Cott Beverages, Inc., any successor thereto and any successor obligor to the Issuer on the Notes, and not to any of its Subsidiaries, and the “Company” refers only to Cott Corporation, and any successor thereto and any successor obligor to the Company on the Guarantee of the Notes, and not to any of its Subsidiaries.

The Issuer will issue the Notes under an indenture (the “Indenture”) to be dated as of the Issue Date among the Issuer, the Guarantors, Wells Fargo Bank, National Association, as trustee (the “Trustee”), and as paying agent, registrar and transfer agent. The Notes will be issued in a private transaction that is not subject to the registration requirements of the Securities Act. See “Notice to Investors.” The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms pursuant to the provisions of the Indenture, and Holders of the Notes are referred to the Indenture for a statement thereof.

The following is a summary of the material provisions of the Indenture. Because this is a summary, it may not contain all the information that is important to you. You should read the Indenture in its entirety. Copies of the proposed form of the Indenture are available as described under “Where You Can Find More Information.” You can find the definitions of certain terms used in this description under “—Certain Definitions.”

### Brief Description of Notes and the Note Guarantees

The Notes will be:

- general unsecured senior obligations of the Issuer;
- *pari passu* in right of payment with any existing and future senior Indebtedness (including the Credit Agreement) of the Issuer;
- effectively subordinated to all Secured Indebtedness of the Issuer (including the Credit Agreement) to the extent of the value of the assets securing such Indebtedness;
- senior in right of payment to any future Subordinated Indebtedness of the Issuer;
- guaranteed on a senior unsecured basis by each Guarantor; and
- structurally subordinated to any existing and future Indebtedness and other liabilities, including preferred stock, of Non-Guarantors.

The Notes and the Indenture will be, jointly and severally, unconditionally guaranteed on a senior unsecured basis by all of the Guarantors. See the section entitled “—Guarantees.”

Each Note Guarantee (as defined below) will be:

- a general unsecured senior obligation of the Guarantor;
- *pari passu* in right of payment with any existing and future senior Indebtedness of the Guarantors;
- effectively subordinated to all Secured Indebtedness of the Guarantors (including the Credit Agreement) to the extent of the value of the assets securing such Indebtedness; and
- senior in right of payment to any future Subordinated Indebtedness of the Guarantor.

## **Principal, Maturity and Interest**

The Notes will be issued in minimum denominations of \$2,000 and in integral multiples of \$1,000 in excess thereof. The rights of Holders of beneficial interests in the Notes to receive the payments on such Notes are subject to applicable procedures of The Depository Trust Company (“DTC”). If the due date for any payment in respect of any Notes is not a Business Day at the place at which such payment is due to be paid, the Holder thereof will not be entitled to payment of the amount due until the next succeeding Business Day at such place, and will not be entitled to any further interest or other payment as a result of any such delay.

The Notes will be issued in an aggregate principal amount of \$525.0 million on the Issue Date. The Notes will mature on \_\_\_\_\_, 2022. Interest on the Notes will accrue at the rate per annum set forth on the cover of this offering memorandum and will be payable, in cash, semi-annually in arrears on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing on \_\_\_\_\_ to Holders of record on the immediately preceding \_\_\_\_\_ and \_\_\_\_\_, respectively. 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 original issuance. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each interest period will end on (but not include) the relevant interest payment date.

Additional Interest may accrue on the Notes in certain circumstances pursuant to the Registrations Rights Agreement. See “Registration Rights.”

## **Additional Notes**

The Indenture will provide for the issuance of additional notes having identical terms and conditions to the Notes offered hereby, subject to compliance with the covenants contained in the Indenture (“*Additional Notes*”). Additional Notes will be part of the same issue as the Notes offered hereby under the Indenture for all purposes, including, without limitation, waivers, amendments, redemptions and offers to purchase, provided that Additional Notes will not be issued with the same CUSIP or ISIN, as applicable, as existing Notes unless such Additional Notes are fungible with the existing Notes for U.S. federal income tax purposes.

## **Payments**

Principal of, and premium, if any, and interest and Additional Interest, if any, on the Notes will be payable at the office or agency of the Issuer maintained for such purpose or, at the option of the paying agent, payment of interest and Additional Interest, if any, may be made by check mailed to the Holders of the Notes at their respective addresses set forth in the register of Holders provided that all payments of principal, premium, if any, interest and Additional Interest, if any, with respect to Notes represented by one or more global notes registered in the name of or held by DTC or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof. Until otherwise designated by the Issuer, the Issuer’s office or agency will be the office of the Agent maintained for such purpose.

## **Guarantees**

The obligations of the Issuer under the Notes and the Indenture will initially be, jointly and severally, unconditionally guaranteed on a senior unsecured basis (the “*Note Guarantees*”) by the Company and each Restricted Subsidiary that guarantees the Credit Agreement (each, a “*Guarantor*”).

In addition, if the Company or any Restricted Subsidiary acquires or creates a Wholly Owned Domestic Subsidiary that is a Restricted Subsidiary (and non-Wholly Owned Subsidiaries if such non-Wholly Owned Subsidiaries guarantee other capital markets debt of the Issuer or any Guarantor) (other than an Immaterial Subsidiary) after the Issue Date, which Subsidiary guarantees the payment of any Indebtedness of the Issuer or any Guarantor, then the Company will cause such new Subsidiary to provide a Note Guarantee.

Each Note Guarantee will be limited to the maximum amount that would not render the Guarantor's obligations subject to avoidance under applicable fraudulent conveyance provisions of the United States Bankruptcy Code or any comparable provision of foreign or state law to comply with corporate benefit, financial assistance and other laws. By virtue of this limitation, a Guarantor's obligation under its Note Guarantee could be significantly less than amounts payable with respect to the Notes, or a Guarantor may have effectively no obligation under its Note Guarantee. See "Risk Factors—Risks Related to the Notes."

The Note Guarantee of a Guarantor will terminate upon:

- (1) a sale or other disposition (including by way of consolidation or merger) of the Capital Stock of such Guarantor (after which such Guarantor is no longer a Restricted Subsidiary) or the sale or disposition of all or substantially all the assets of the Guarantor (other than to the Company or a Restricted Subsidiary) otherwise permitted by the Indenture;
- (2) the designation in accordance with the Indenture of the Guarantor as an Unrestricted Subsidiary or the occurrence of any event after which the Guarantor is no longer a Restricted Subsidiary;
- (3) defeasance or discharge of the Notes, as provided in "—Defeasance" and "—Satisfaction and Discharge";
- (4) to the extent that such Guarantor is not an Immaterial Subsidiary solely due to the operation of clause (i) of the definition of "Immaterial Subsidiary," upon the release of the guarantee referred to in such clause; or
- (5) to the extent such Guarantor is also a guarantor or borrower under the Credit Agreement and, at the time of release of its Guarantee, (x) has been released from its guarantee of, and all pledges and security, if any, granted in connection with the Credit Agreement, (y) does not Guarantee any Indebtedness of the Company or any of the other Guarantors, and (z) there is no Indebtedness outstanding that was Incurred by such Guarantor under the first paragraph of "—Limitation on Indebtedness" in its status as a Guarantor.

Claims of creditors of non-guarantor Subsidiaries, including trade creditors, secured creditors and creditors holding debt and guarantees issued by those Subsidiaries, and claims of preferred and minority stockholders (if any) of those Subsidiaries and claims against joint ventures generally will have priority with respect to the assets and earnings of those Subsidiaries and joint ventures over the claims of creditors of the Company, including Holders of the Notes. The Notes and each Note Guarantee therefore will be effectively subordinated to creditors (including trade creditors) and preferred and minority stockholders (if any) of Subsidiaries of the Company (other than the Guarantors) and joint ventures. Although the Indenture limits the incurrence of Indebtedness, Disqualified Stock and Preferred Stock of Restricted Subsidiaries, the limitation is subject to a number of significant exceptions. Moreover, the Indenture does not impose any limitation on the incurrence by Restricted Subsidiaries of liabilities that are not considered Indebtedness, Disqualified Stock or Preferred Stock under the Indenture. See "—Certain Covenants—Limitation on Indebtedness."

### **Optional Redemption**

Except as set forth in the next three paragraphs, the Notes are not redeemable at the option of the Issuer.

At any time prior to \_\_\_\_\_, 2017 the Issuer may redeem the Notes in whole or in part, at its option, upon not less than 30 nor more than 60 days' prior notice at a redemption price equal to 100% of the principal amount of such Notes plus the relevant Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the redemption date.

At any time and from time to time on or after \_\_\_\_\_, 2017 the Issuer may redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' notice at a redemption price equal to the percentage of

principal amount set forth below plus accrued and unpaid interest and Additional Interest, if any, on the Notes redeemed, to the applicable date of redemption, if redeemed during the twelve-month period beginning on of the year indicated below:

<u>Year</u>	<u>Percentage</u>
2017 .....	%
2018 .....	%
2019 .....	%
2020 and thereafter .....	100.000%

At any time and from time to time prior to \_\_\_\_\_, 2017, the Issuer may redeem Notes with the Net Cash Proceeds received by the Company from any Equity Offering at a redemption price equal to \_\_\_\_\_ % plus accrued and unpaid interest and Additional Interest, if any, to the redemption date, in an aggregate principal amount for all such redemptions not to exceed 40% of the original aggregate principal amount of the Notes (including Additional Notes), *provided that*:

- (1) in each case the redemption takes place not later than 180 days after the closing of the related Equity Offering; and
- (2) not less than 60% of the original aggregate principal amount of the Notes (including Additional Notes) issued under the Indenture remains outstanding immediately thereafter (excluding Notes held by the Company or any of its Subsidiaries).

Notice of redemption will be provided as set forth under “—Selection and Notice” below.

Any redemption and notice of redemption may, at the Issuer’s discretion, be subject to the satisfaction of one or more conditions precedent (including, in the case of a redemption related to an Equity Offering, the consummation of such Equity Offering). In addition, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice shall state that, in the Issuer’s discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied (or waived by the Issuer in its sole discretion), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Issuer in its sole discretion) by the redemption date, or by the redemption date so delayed.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to Holders whose Notes will be subject to redemption by the Issuer. If the Issuer delivers global notes to the Trustee for cancellation on a date that is after the record date and on or before the next interest payment date, then interest shall be paid in accordance with the procedures of DTC.

Unless the Issuer defaults in the payment of the redemption price, interest will cease to accrue on the notes or portions thereof called for redemption on the applicable redemption date.

### **Sinking Fund**

The Issuer is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes. However, under certain circumstances, the Issuer may be required to offer to purchase Notes as described under the captions “Change of Control,” and “Certain Covenants— Limitation on Sales of Assets and Subsidiary Stock.” The Company may at any time and from time to time purchase Notes in the open market or otherwise.



## Selection and Notice

If less than all of the Notes are to be redeemed at any time, the Agent, as registrar, will select the Notes for redemption in compliance with the requirements of the principal securities exchange, if any, on which the Notes are listed, as certified to the Trustee by the Issuer, and in compliance with the requirements of DTC, or if the Notes are not so listed or such exchange prescribes no method of selection and the Notes are not held through DTC or DTC prescribes no method of selection, on a pro rata basis; *provided, however*, that no Note in an unauthorized denomination shall be redeemed in part.

Notices of redemption will be delivered electronically or mailed by first class mail at least 30 but not more than 60 days before the redemption date to each Holder to be redeemed at the address of such Holder appearing in the security register or otherwise in accordance with the procedures of DTC, except that redemption notices may be delivered electronically or mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed, in which case a portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. In the case of a Global Note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof. Subject to the terms of the applicable redemption notice (including any conditions contained therein), Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, unless the Issuer defaults in the payment of the redemption price, interest ceases to accrue on Notes or portions of them called for redemption.

## Change of Control

If a Change of Control occurs, each holder of Notes will have the right to require the Issuer 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 a "*Change of Control Offer*." In the Change of Control Offer, the Issuer will offer a "*Change of Control Payment*" in cash equal to 101% of the aggregate principal amount of the Notes repurchased, plus accrued and unpaid interest and Additional Interest thereon, if any, to the date of purchase. If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to Holders whose Notes will be subject to the Change of Control Payment by the Issuer.

Within 30 days following any Change of Control, the Issuer will mail a notice to each holder (with a copy to the Trustee) describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on a certain date (the "*Change of Control Payment Date*") specified in such notice, which will be no earlier than 30 days and no later than 60 days from the date such notice is delivered, pursuant to the procedures required by the Indenture and described in such notice. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this covenant, the Issuer's compliance with such laws and regulations shall not in and of itself cause a breach of their obligations under such covenant.

On the Change of Control Payment Date, the Issuer will, to the extent lawful:

- (1) accept for payment all Notes or portions thereof 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 thereof so tendered; and

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

The paying agent will promptly mail to each holder of Notes so 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 such 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 Issuer to make a Change of Control Offer following a Change of Control will be applicable regardless of whether or not any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture will not contain provisions that permit the holders of the Notes to require that the Issuer repurchases or redeems the Notes in the event of a takeover, recapitalization or similar transaction.

The Issuer 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 the Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

In the event that holders of not less than 90% of the aggregate principal amount of the outstanding notes accept a Change of Control Offer and the Issuer purchases all of the Notes held by such holders, the Issuer will have the right, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described above, to redeem all of the Notes that remain outstanding following such purchase at a redemption price equal to the Change of Control Payment plus, to the extent not included in the Change of Control Payment, accrued and unpaid interest on the notes that remain outstanding, to, but not including, the date of redemption (subject to the right of holders of record on the relevant record date to receive interest due on an interest payment date that is on or prior to the redemption date).

The definition of Change of Control includes a phrase relating to the sale, lease, transfer, conveyance or other disposition of "all or substantially all" of the assets of the Company and its Subsidiaries, taken as a whole. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of Notes to require the Issuer to repurchase Notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the assets of the Issuer and its Subsidiaries, taken as a whole, or of the Company and its Subsidiaries, taken as a whole, to another Person or group may be uncertain.

The Credit Agreement provides that certain change of control events with respect to the Company would constitute a default under the Credit Agreement. Any future credit agreements or other similar agreements to which the Company or the Issuer becomes a party may contain similar restrictions and provisions and may also prohibit the Issuer from purchasing any Notes. In the event a Change of Control occurs at a time when the Company or the Issuer is prohibited from purchasing Notes, the Company or the Issuer could seek the consent of its lenders to the purchase of Notes or could attempt to refinance the borrowings that contain such prohibition. If the Company or the Issuer does not obtain such a consent or repay such borrowings, the Issuer will remain prohibited from purchasing Notes. In such case, the Issuer's failure to purchase tendered Notes would constitute an Event of Default under the Indenture which would, in turn, constitute a default under such other agreements. In addition, the exercise by the holders of Notes of their right to require the Issuer to repurchase the Notes upon a Change of Control could cause a default under these other agreements, even if the Change of Control itself does not, due to the financial effect of such repurchase on the Company. Finally, the Issuer's ability to pay cash to the holders of Notes upon a repurchase may be limited by the Company's or the Issuer's then existing financial resources.

The provisions under the Indenture relative to the Company's obligation to make an offer to repurchase the Notes as a result of a Change of Control may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes then outstanding.

### **Certain Covenants**

Set forth below are summaries of certain covenants that will be contained in the Indenture.

#### ***Suspension of Covenants on Achievement of Investment Grade Status***

Following the first day:

- (a) the Notes have achieved Investment Grade Status; and
- (b) no Default or Event of Default has occurred and is continuing under the Indenture, then, beginning on that day, and continuing until the Reversion Date (as defined below), the Company and its Restricted Subsidiaries will not be subject to the provisions of the Indenture summarized under the following headings (collectively, the "Suspended Covenants"):
  - "—Limitation on Indebtedness,"
  - "—Limitation on Restricted Payments,"
  - "—Limitation on Restrictions on Distributions from Restricted Subsidiaries,"
  - "—Limitation on Sales of Assets and Subsidiary Stock,"
  - "—Limitation on Affiliate Transactions,"
  - "—Limitation on Guarantees," and
  - the provisions of clause (3) of the first paragraph of "—Merger and Consolidation."

No Default, Event of Default or breach of any kind shall be deemed to exist under the indenture or the notes with respect to the Suspended Covenants based on, and none of the Company or any of its Subsidiaries shall bear any liability for, any actions taken or events occurring after the notes attain an Investment Grade Rating, regardless of whether such actions or event would have been permitted if the applicable Suspended Covenants remained in effect. The Suspended Covenants will not be reinstated even if the Company subsequently does not satisfy the requirements set forth in clauses (a) and (b) above. After the Suspended Covenants have been suspended, the Company and its Restricted Subsidiaries shall remain subject to the provisions of the indenture described above under the caption "Repurchase at the Option of Holders—Change of Control" and described under the following subheadings:

- "Liens,"
- "Merger, Consolidation or Sale of Assets" (other than the financial test set forth in clause (3) of that covenant), and
- "SEC Reports."

If at any time the Notes cease to have such Investment Grade Status or if a Default or Event of Default occurs and is continuing, then the Suspended Covenants will thereafter be reinstated as if such covenants had never been suspended (the "*Reversion Date*") and be applicable pursuant to the terms of the Indenture (including in connection with performing any calculation or assessment to determine compliance with the terms of the Indenture), unless and until the Notes subsequently attain Investment Grade Status and no Default or Event of

Default is in existence (in which event the Suspended Covenants shall no longer be in effect for such time that the Notes maintain an Investment Grade Status and no Default or Event of Default is in existence); *provided, however,* that no Default, Event of Default or breach of any kind shall be deemed to exist under the Indenture or the Notes with respect to the Suspended Covenants based on, and none of the Company or any of its Subsidiaries shall bear any liability under the Indenture or the Notes for, any actions taken or events occurring during the Suspension Period (as defined below), or any actions taken at any time pursuant to any contractual obligation entered into during the Suspension Period and not in contemplation of an impending Reversion Date, regardless of whether such actions or events would have been permitted if the applicable Suspended Covenants remained in effect during such period. The period of time between the date of suspension of the covenants and the Reversion Date is referred to as the “*Suspension Period*.”

On the Reversion Date, all Indebtedness Incurred during the Suspension Period will be classified to have been Incurred pursuant to the first paragraph of “—Limitation on Indebtedness” or one of the clauses set forth in the second paragraph of “—Limitation on Indebtedness” (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to the Indebtedness Incurred prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be Incurred pursuant to the first and second paragraphs of “—Limitation on Indebtedness,” such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (4)(b) of the second paragraph of “—Limitation on Indebtedness.” Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under “—Limitation on Restricted Payments” will be made as though the covenants described under “—Limitation on Restricted Payments” had been in effect since the Issue Date and throughout the Suspension Period; *provided,* that, no Subsidiaries may be designated as Unrestricted Subsidiaries during the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under the first paragraph of “—Limitation on Restricted Payments.” During the Suspension Period, any future obligation to grant further Note Guarantees shall be suspended. All such further obligation to grant Note Guarantees shall be reinstated upon the Reversion Date.

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

### ***Limitation on Indebtedness***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) and the Company will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided,* that the Company may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00, 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 or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such four- quarter period; *provided* that the then outstanding aggregate principal amount of Indebtedness (including Acquired Indebtedness), Disqualified Stock and Preferred Stock that may be incurred or issued, as applicable, pursuant to the foregoing by Restricted Subsidiaries that are not the Issuer or Guarantors shall not exceed \$100.0 million.

The first paragraph of this covenant will not prohibit the Incurrence of the following Indebtedness:

- (1) the incurrence of Indebtedness pursuant to any Credit Facility; *provided* that the aggregate principal amount of all such Indebtedness outstanding under this clause (1) as of any date of

incurrence (after giving *pro forma* effect to the application of the proceeds of such incurrence) shall not exceed (i) the greater of (A) \$350 million, and (B) the sum of (x) 85% of the net book value of the accounts receivable of the Company and its Restricted Subsidiaries, (y) 75% of the total Eligible Inventory of the Company and its Restricted Subsidiaries, and (z) the sum of (A) 75% of the Eligible Real Property of the Company and its Restricted Subsidiaries and (B) 85% of the value of the Eligible Equipment of the Company and its Restricted Subsidiaries, in each case, in each case determined in accordance with GAAP and calculated on a pro forma basis to give effect to any acquisitions or dispositions of assets made in connection with any transaction on the date of calculation; plus (ii) in the case of any refinancing of any Indebtedness permitted under this clause or any portion thereof, the aggregate amount of fees, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses Incurred in connection with such refinancing;

- (2) Guarantees by the Company or any Restricted Subsidiary of Indebtedness of the Company or any Guarantor so long as the Incurrence of such Indebtedness is permitted under the terms of the Indenture;
- (3) Indebtedness, Preferred Stock or Disqualified Stock held by the Company or any Restricted Subsidiary; *provided, however*, that:
  - (a) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness, Preferred Stock or Disqualified Stock being beneficially 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, Preferred Stock or Disqualified Stock to a Person other than the Company or a Restricted Subsidiary of the Company, shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be;
- (4) Indebtedness represented by (a) the Notes (other than any Additional Notes), including any Guarantee thereof, (b) any Indebtedness (other than Indebtedness incurred pursuant to clauses (1) and (3)) outstanding on the Issue Date, and (c) Refinancing Indebtedness Incurred in respect of any Indebtedness described in this clause or clauses (5), (7) or (13) of this paragraph or Incurred pursuant to the first paragraph of this covenant;
- (5) Indebtedness of (x) the Company or any Restricted Subsidiary Incurred or issued to finance an acquisition or (y) Persons that are acquired by the Company or any Restricted Subsidiary or merged into or consolidated with the Company or a Restricted Subsidiary in accordance with the terms of the Indenture; provided that after giving effect to such acquisition, merger or consolidation, either:
  - (a) the Company would 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 this covenant; or
  - (b) the Fixed Charge Coverage Ratio of the Company and the Restricted Subsidiary would not be lower than immediately prior to such acquisition, merger or consolidation.
- (6) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);
- (7) Indebtedness represented by Capitalized Lease Obligations or Purchase Money Obligations, in an aggregate principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this clause and then outstanding, including Refinancing Indebtedness in respect thereof, does not exceed \$125.0 million;

- (8) Indebtedness in respect of (a) workers' compensation claims, self-insurance obligations, performance, indemnity, surety, judgment, appeal, advance payment, customs, value added or other tax or other guarantees or other similar bonds, instruments or obligations and completion guarantees and warranties provided by the Company or a Restricted Subsidiary or relating to liabilities, obligations or guarantees Incurred in the ordinary course of business or consistent with past practices (other than Guarantees for borrowed money), (b) 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 or consistent with past practices; *provided, however*, that such Indebtedness is extinguished within five Business Days of Incurrence; (c) customer deposits and advance payments received in the ordinary course of business or consistent with past practices from customers for goods or services purchased in the ordinary course of business or consistent with past practices; (d) letters of credit, bankers' acceptances, guarantees or other similar instruments or obligations issued or relating to liabilities or obligations Incurred in the ordinary course of business or consistent with past practices, and (e) any customary cash management, cash pooling or netting or setting off arrangements in the ordinary course of business or consistent with past practices;
- (9) Indebtedness arising from agreements providing for guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); *provided* that the maximum liability of the Company and its Restricted Subsidiaries in respect of all such Indebtedness in connection with a Disposition shall at no time exceed the gross proceeds, including the fair market value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Company and its Restricted Subsidiaries in connection with such disposition;
- (10) Indebtedness of Non-Guarantors in an aggregate amount not to exceed the greater of (a) \$20.0 million and (b) 1.5% of the Total Assets of the Company at any time outstanding and any Refinancing Indebtedness in respect thereof;
- (11) Indebtedness consisting of promissory notes issued by the Company or any of its Subsidiaries to any current or former employee, director or consultant of the Company or any of its Subsidiaries (or permitted transferees, assigns, estates, or heirs of such employee, director or consultant), to finance the purchase or redemption of Capital Stock of the Company that is permitted by the covenant described below under "—Limitation on Restricted Payments";
- (12) Indebtedness of the Company or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums Incurred in the ordinary course of business or (ii) take-or-pay obligations contained in supply arrangements, in each case; and
- (13) Indebtedness in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this clause and then outstanding, will not exceed the greater of (a) \$100.0 million and (b) 6.75% of the Total Assets of the Company at the time of Incurrence.



For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this covenant:

- (1) subject to clause (3) below, in the event that all or any portion of any item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in the first and second paragraphs of this covenant, the Company, in its sole discretion, will classify, and may from time to time reclassify, such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of the clauses of the second paragraph or the first paragraph of this covenant;
- (2) subject to clause (3) below, additionally, all or any portion of any item of Indebtedness may later be classified as having been Incurred pursuant to any type of Indebtedness described in the first and second paragraphs of this covenant so long as such Indebtedness is permitted to be Incurred pursuant to such provision at the time of reclassification;
- (3) all Indebtedness outstanding on the Issue Date under the Credit Agreement shall be deemed Incurred on the Issue Date under clause (1) of the second paragraph of the description of this covenant;
- (4) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;
- (5) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are Incurred pursuant to any Credit Facility and are being treated as Incurred pursuant to clause (1), (7), (10) or (13) of the second paragraph above or the first paragraph above and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;
- (6) the principal amount of any Disqualified Stock of the Company or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;
- (7) Indebtedness permitted by this covenant need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this covenant permitting such Indebtedness; and
- (8) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined on the basis of GAAP.

Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in GAAP, will not be deemed to be an Incurrence of Indebtedness. The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (b) the principal amount of the Indebtedness, or liquidation preference thereof, in the case of any other Indebtedness.

If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall 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 the covenant described under this "—Limitation on Indebtedness," the Company shall be in default of this covenant).



Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Company or a Restricted Subsidiary may Incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing. The Indenture will provide that the Company and the Issuer will not, and will not permit any Guarantor to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) that is subordinated or junior in right of payment to any Indebtedness of the Company, the Issuer or such Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Notes or such Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Company or such Guarantor, as the case may be.

The Indenture will not treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as subordinated or junior to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral or is secured by different collateral.

#### ***Limitation on Restricted Payments***

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

- (1) declare or pay any dividend or make any distribution on or in respect of the Company's or any Restricted Subsidiary's Capital Stock (including, without limitation, any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except:
  - (a) dividends or distributions payable in Capital Stock of the Company (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Company; and
  - (b) dividends or distributions payable to the Company or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Company or another Restricted Subsidiary on no more than a pro rata basis);
- (2) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Company held by Persons other than the Company or a Restricted Subsidiary;
- (3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than (a) any such purchase, repurchase, redemption, defeasance or other acquisition or retirement in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement and (b) any Indebtedness Incurred pursuant to clause (3) of the second paragraph of the covenant described under "—Limitation on Indebtedness"); or
- (4) make any Restricted Investment;

(any such dividend, distribution, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (1) through (4) are referred to herein as a “Restricted Payment”), if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

- (a) a Default shall have occurred and be continuing (or would result immediately thereafter therefrom);
- (b) the Company is not able to Incur an additional \$1.00 of Indebtedness pursuant to the first paragraph under the “—Limitation on Indebtedness” covenant after giving effect, on a *pro forma* basis, to such Restricted Payment; or
- (c) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to October 1, 2001 (and not returned or rescinded) (including Permitted Payments permitted below by clause (6) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph) would exceed the sum of (without duplication):
  - (i) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) beginning on October 1, 2001 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, in the case such Consolidated Net Income for such period is a deficit, minus 100% of such deficit; *plus*
  - (ii) 100% of the aggregate Net Cash Proceeds, and the fair market value of property or assets or marketable securities, received by the Company from the issue or sale of its Capital Stock (other than Disqualified Stock) subsequent to the Issue Date or otherwise contributed to the equity (other than through the issuance of Disqualified Stock) of the Company subsequent to the Issue Date (other than (x) Net Cash Proceeds or property or assets or marketable securities received from an issuance or sale of such Capital Stock pursuant to an incentive plan established by the Company or any Subsidiary of the Company for the benefit of its employees to the extent funded by the Company or any Restricted Subsidiary, (y) Net Cash Proceeds or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on clause (6) of the next succeeding paragraph and (z) Excluded Contributions);
  - (iii) 100% of the aggregate Net Cash Proceeds, and the fair market value of property or assets or marketable securities, received by the Company or any Restricted Subsidiary from the issuance or sale (other than to the Company or a Restricted Subsidiary of the Company or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Restricted Subsidiary) by the Company or any Restricted Subsidiary subsequent to the Issue Date of any Indebtedness or Disqualified Stock that has been converted into or exchanged for Capital Stock of the Company (other than Disqualified Stock) plus, without duplication, the amount of any cash, and the fair market value of property or assets or marketable securities, received by the Company or any Restricted Subsidiary upon such conversion or exchange;
  - (iv) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Company, of marketable securities or other property received by means of: (i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of Restricted Investments made by the Company or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the

Company or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments by the Company or its Restricted Subsidiaries, in each case after the Issue Date; or (ii) the sale (other than to the Company or a Restricted Subsidiary) of the stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent of the amount of the Investment that constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Issue Date; and

- (v) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger or consolidation of an Unrestricted Subsidiary into the Company or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Company or a Restricted Subsidiary after the Issue Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred), as determined in good faith of the Company at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger or consolidation or transfer of assets (after taking into consideration any Indebtedness associated with the Unrestricted Subsidiary so designated or merged or consolidated or Indebtedness associated with the assets so transferred), other than to the extent of the amount of the Investment that constituted a Permitted Investment.

As of March 29, 2014, the amount available for Restricted Payments pursuant to clause (c) above would have been approximately \$215.2 million.

The foregoing provisions will not prohibit any of the following (collectively, “*Permitted Payments*”):

- (1) the payment of any dividend or distribution within 60 days after the date of declaration thereof if at the date of declaration such payment would have complied with the provisions of the Indenture, or the redemption, repurchase or retirement of Indebtedness if, at the date of any irrevocable redemption notice, such payment would have complied with the provisions of the Indenture as if it were and is deemed at such time to be a Restricted Payment at the time of such notice;
- (2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Stock or Subordinated Indebtedness made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company (other than Disqualified Stock) (“*Refunding Capital Stock*”) or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock or through an Excluded Contribution) of the Company; *provided, however*, that to the extent so applied, the Net Cash Proceeds, or fair market value of property or assets or of marketable securities, from such sale of Capital Stock or such contribution will be excluded from clause (c) of the preceding paragraph;
- (3) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Subordinated Indebtedness that constitutes Refinancing Indebtedness permitted to be Incurred pursuant to the covenant described under “—Limitation on Indebtedness” above;
- (4) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Preferred Stock of the Company or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock (other than an issuance of Disqualified Stock of the Company or Preferred Stock of a Restricted Subsidiary to replace Preferred Stock (other than Disqualified Stock) of the Company) of the Company or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to the covenant described under “—Limitation on Indebtedness” above;

- (5) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness or Disqualified Stock or Preferred Stock of a Restricted Subsidiary:
- (a) from Net Available Cash to the extent permitted under “—Limitation on Sales of Assets and Subsidiary Stock” below, but only if the Company shall have first complied with the terms described under “—Limitation on Sales of Assets and Subsidiary Stock” and purchased all Notes tendered pursuant to any offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness, Disqualified Stock or Preferred Stock; or
  - (b) to the extent required by the agreement governing such Subordinated Indebtedness, Disqualified Stock or Preferred Stock, following the occurrence of a Change of Control (or other similar event described therein as a “change of control”), but only if the Company shall have first complied with the terms described under “—Change of Control” and purchased all Notes tendered pursuant to the offer to repurchase all the Notes required thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness, Disqualified Stock or Preferred Stock;
- (6) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Capital Stock (other than Disqualified Stock) of the Company held by any future, present or former employee, director or consultant of the Company or any of its Subsidiaries (or permitted transferees, assigns, estates, trusts or heirs of such employee, director or consultant) either pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or upon the termination of such employee, director or consultant’s employment or directorship; *provided, however*, that the aggregate Restricted Payments made under this clause do not exceed \$5.0 million in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of \$10.0 million in any calendar year); *provided further* that such amount in any calendar year may be increased by an amount not to exceed:
- (a) the cash proceeds from the sale of Capital Stock (other than Disqualified Stock) of the Company to members of management, directors or consultants of the Company or any of its Subsidiaries that occurred after the Issue Date, to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the payment of Restricted Payments by virtue of clause (c) of the preceding paragraph; plus
  - (b) the cash proceeds of key man life insurance policies received by the Company and its Restricted Subsidiaries after the Issue Date; less
  - (c) the amount of any Restricted Payments made in previous calendar years pursuant to clauses (a) and (b) of this clause;
- and *provided further* that cancellation of Indebtedness owing to the Company or any Restricted Subsidiary from members of management, directors, employees or consultants of the Company or Restricted Subsidiaries in connection with a repurchase of Capital Stock of the Company will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provision of the Indenture;
- (7) the declaration and payment of dividends on Disqualified Stock, or Preferred Stock of a Restricted Subsidiary, Incurred in accordance with the terms of the covenant described under “—Limitation on Indebtedness” above;

- (8) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof;
- (9) repurchases of shares of capital stock and the payment of cash dividends on the Company's Common Stock in an annual aggregate amount not to exceed \$0.24 multiplied by the number of shares of the Company's Common Stock outstanding as of the date of such repurchase or the record date for such dividends (such \$0.24 amount shall be appropriately adjusted for any stock splits, stock dividends, reverse stock splits, stock consolidations and similar transactions);
- (10) payments by the Company to holders of Capital Stock of the Company in lieu of the issuance of fractional shares of such Capital Stock, *provided, however*, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this covenant or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Board of Directors);
- (11) Restricted Payments that are made with Excluded Contributions;
- (12) so long as no Default or Event of Default has occurred and is continuing (or would result from), Restricted Payments (including loans or advances) in an aggregate amount outstanding at the time made not to exceed \$75.0 million;
- (13) so long as no Default or Event of Default has occurred and is continuing (or would result therefrom), mandatory redemptions of Disqualified Stock issued as a Restricted Payment or as consideration for a Permitted Investment;
- (14) any Restricted Payments made by the Company or any Restricted Subsidiary; provided that, immediately after giving pro forma effect thereto and the Incurrence of any Indebtedness the net proceeds of which are used to finance such Restricted Payment, the Consolidated Total Leverage Ratio would be no greater than 2.50 to 1.00; and
- (15) the designation of a Restricted Subsidiary as an Unrestricted Subsidiary; provided that (x) the assets of such Restricted Subsidiary immediately prior to such designation consists only of operations in the United Kingdom, (y) the total assets of such Restricted Subsidiary less all liabilities of such Restricted Subsidiary (other than liabilities for which the Company or any Restricted Subsidiary will be liable immediately after such designation) is less than 15% of the Company's total consolidated assets less total consolidated liabilities (on the most recently available quarterly or annual consolidated balance sheet of the Company prepared in conformity with GAAP), provided further, that the net assets of such Restricted Subsidiary may exceed 15% of the Company's net assets to the extent that the Company would be permitted to make a Restricted Payment in an amount equal to such excess and (z) immediately prior to and after giving effect to such designation, the Company could incur at least \$1 of additional Indebtedness under the first paragraph set forth under the caption "—Incurrence of Indebtedness and Issuance of Preferred Stock" as if the Fixed Charge Coverage Ratio were 2.75 to 1.

For purposes of determining compliance with this "Restricted Payments" covenant, in the event that a Restricted Payment meets the criteria of more than one of the categories of Permitted Payments described in clauses (1) through (15) above, or is permitted pursuant to the first paragraph of this covenant, the Company will be entitled to classify such Restricted Payment (or portion thereof) on the date of its payment or later reclassify such Restricted Payment (or portion thereof) in any manner that complies with this covenant, except that the Company may not reclassify any Restricted Payments as having been made under clause (14) above if originally made under another clause or pursuant to the first paragraph of this covenant.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be their face amount, and the fair market value of any non-cash Restricted Payment, property or assets other than cash shall be determined conclusively by the Board of Directors of the Company acting in good faith.

### ***Limitation on Liens***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur or permit to exist any Lien that secures Indebtedness (other than Permitted Liens) upon any of its property or assets (including Capital Stock of a Restricted Subsidiary of the Company), whether owned on the Issue Date or acquired after that date, (such Lien, the “*Initial Lien*”), without effectively providing that the Notes shall be secured equally and ratably with (or prior to) the obligations so secured for so long as such obligations are so secured.

Any Lien created for the benefit of the Holders of the Notes pursuant to the preceding sentence shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “Increased Amount” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

### ***Limitation on Restrictions on Distributions from Restricted Subsidiaries***

The Company will not, and will not permit any Restricted Subsidiary (other than a Guarantor) to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

- (A) pay dividends or make any other distributions in cash or otherwise on its Capital Stock or pay any Indebtedness or other obligations owed to the Company or any Restricted Subsidiary;
- (B) make any loans or advances to the Company or any Restricted Subsidiary; or
- (C) sell, lease or transfer any of its property or assets to the Company or any Restricted Subsidiary; *provided that* (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

The provisions of the preceding paragraph will not prohibit:

- (1) any encumbrance or restriction pursuant to (a) any Credit Facility or (b) any other agreement or instrument, in each case, in effect at or entered into on the Issue Date (or otherwise required as of the Issue Date);



- (2) the Indenture, the Notes and the Note Guarantees;
- (3) any encumbrance or restriction pursuant to applicable law, rule, regulation or order;
- (4) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Company or any Restricted Subsidiary, or was designated as a Restricted Subsidiary or on which such agreement or instrument is assumed by the Company or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by the Company or was merged, consolidated or otherwise combined with or into the Company or any Restricted Subsidiary or such agreement or instrument was entered into in contemplation of or in connection with such transaction) and outstanding on such date; *provided* that, for the purposes of this clause, if another Person is the Successor Company, any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed by the Company or any Restricted Subsidiary when such Person becomes the Successor Company;
- (5) any encumbrance or restriction:
  - (a) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract or agreement, or the assignment or transfer of any lease, license or other contract or agreement;
  - (b) contained in mortgages, pledges, charges or other security agreements permitted under the Indenture or securing Indebtedness of the Company or a Restricted Subsidiary permitted under the Indenture to the extent such encumbrances or restrictions restrict the transfer or encumbrance of the property or assets subject to such mortgages, pledges, charges or other security agreements; or
  - (c) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;
- (6) any encumbrance or restriction pursuant to Purchase Money Obligations or Capitalized Lease Obligations permitted under the Indenture, in each case, that impose encumbrances or restrictions on the property so acquired;
- (7) any encumbrance or restriction imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of the Company or any Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;
- (8) customary provisions in leases, licenses, shareholder agreements, joint venture agreements, organizational documents and other similar agreements and instruments;
- (9) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business or consistent with past practices;
- (10) any encumbrance or restriction pursuant to Hedging Obligations;
- (11) other Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be Incurred or issued subsequent to the Issue Date pursuant to the provisions of the covenant



described under “—Limitation on Indebtedness” that impose restrictions solely on the Foreign Subsidiaries party thereto or their Subsidiaries;

- (12) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be Incurred subsequent to the Issue Date pursuant to the provisions of the covenant described under “—Limitation on Indebtedness” if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Holders than (i) the encumbrances and restrictions contained in the Credit Agreement, together with the security documents associated therewith as in effect on the Issue Date or (ii) in comparable financings (as determined in good faith by the Company) and where, in the case of clause (ii), either (a) the Company determines at the time of issuance of such Indebtedness that such encumbrances or restrictions will not adversely affect, in any material respect, the Company’s ability to make principal or interest payments on the Notes or (b) such encumbrance or restriction applies only during the continuance of a default relating to such Indebtedness;
- (13) any encumbrance or restriction existing by reason of any lien permitted under “—Limitation on Liens”; or
- (14) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness Incurred pursuant to, or that otherwise extends, renews, restates, replaces, restructures or refinances, an agreement or instrument referred to in clauses (1) to (13) of this paragraph or this clause (an “*Initial Agreement*”) or contained in any amendment, supplement, extension, renewal, restatement, replacement, restructuring or other modification to an agreement referred to in clauses (1) to (13) of this paragraph or this clause (14); *provided, however*, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or instrument are not materially less favorable to the Holders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Company).

#### ***Limitation on Sales of Assets and Subsidiary Stock***

The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

- (1) the Company or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors of the Company, of the shares and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap);
- (2) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), at least 75% of the consideration from such Asset Disposition (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; and
- (3) the Company or any of its Restricted Subsidiaries, at its respective option, will apply such Net Available Cash from any Asset Disposition:
  - (a) (i) to prepay, repay or purchase any Indebtedness of a Non-Guarantor or that is secured by a Lien (in each case, other than Indebtedness owed to the Company or any Restricted

Subsidiary) or Indebtedness under the Credit Agreement (or any Refinancing Indebtedness in respect thereof) within 365 days from the later of (A) the date of such Asset Disposition and (B) the receipt of such Net Available Cash; *provided, however*, that, in connection with any prepayment, repayment or purchase of Indebtedness pursuant to this clause (a), the Company or such Restricted Subsidiary will retire such Indebtedness and will cause the related commitment (if any) to be reduced in an amount equal to the principal amount so prepaid, repaid or purchased; or (ii) to prepay, repay or purchase Pari Passu Indebtedness; provided further that, to the extent the Company redeem, repay or repurchase Pari Passu Indebtedness pursuant to this clause (ii), the Company shall equally and ratably reduce Obligations under the Notes as provided under “—Optional Redemption,” through open-market purchases (to the extent such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Disposition Offer) to all Holders to purchase their Notes at 100% of the principal amount thereof, plus the amount of accrued but unpaid interest and Additional Interest, if any, on the amount of Notes that would otherwise be prepaid; or

- (b) to invest in or commit to invest in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary with Net Available Cash received by the Company or another Restricted Subsidiary) within 365 days from the later of (i) the date of such Asset Disposition and (ii) the receipt of such Net Available Cash; *provided, however*, that any such reinvestment in Additional Assets made pursuant to a definitive binding agreement or a commitment approved by the Board of Directors of the Company that is executed or approved within such time will satisfy this requirement, so long as such investment is consummated within 180 days of such 365th day;

*provided* that, pending the final application of any such Net Available Cash in accordance with clause (a) or clause (b) above, the Company and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise use such Net Available Cash in any manner not prohibited by the Indenture.

Any Net Available Cash from Asset Dispositions that is not applied or invested or committed to be applied or invested as provided in the preceding paragraph will be deemed to constitute “*Excess Proceeds*” under the Indenture. If the aggregate amount of Excess Proceeds under the Indenture exceeds \$40 million, the Company will within 10 Business Days be required to make an offer (“*Asset Disposition Offer*”) to all Holders of Notes issued under such Indenture and, to the extent the Company or the Issuer elects, to all holders of other outstanding Pari Passu Indebtedness, to purchase the maximum principal amount of Notes and any such Pari Passu Indebtedness to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in respect of the Notes in an amount equal to 100% of the principal amount of the Notes and Pari Passu Indebtedness, in each case, plus accrued and unpaid interest and Additional Interest, if any, to, but not including, the date of purchase, in accordance with the procedures set forth in the Indenture or the agreements governing the Pari Passu Indebtedness, as applicable, and, with respect to the Notes, in minimum denominations of \$2,000 and in integral multiples of \$1,000 in excess thereof. The Company will deliver notice of such Asset Disposition Offer electronically or by first-class mail, with a copy to the Trustee and Agent, to each Holder of Notes at the address of such Holder appearing in the security register or otherwise in accordance with the procedures of DTC, describing the transaction or transactions that constitute the Asset Disposition and offering to repurchase the Notes for the specified purchase price on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is delivered, pursuant to the procedures required by the Indenture and described in such notice.

To the extent that the aggregate amount of Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for any purpose not prohibited by the Indenture. If the aggregate principal amount of the Notes surrendered in any Asset Disposition Offer by Holders and other Pari Passu

Indebtedness surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Excess Proceeds shall be allocated among the Notes and Pari Passu Indebtedness to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and Pari Passu Indebtedness, provided that no Notes or other Pari Passu Indebtedness will be selected and purchased in an unauthorized denomination. Upon completion of any Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

To the extent that any portion of Net Available Cash payable in respect of the Notes is denominated in a currency other than U.S. dollars, the amount thereof payable in respect of the Notes shall not exceed the net amount of funds in U.S. dollars that is actually received by the Company upon converting such portion into U.S. dollars.

Notwithstanding any other provisions of this covenant, (i) to the extent that any of or all the Net Available Cash of any Asset Disposition by a Foreign Subsidiary (a "Foreign Disposition") is (x) prohibited or delayed by applicable local law, (y) restricted by applicable organizational documents or any agreement or (z) subject to other onerous organizational or administrative impediments from being repatriated to the United States, the portion of such Net Available Cash so affected will not be required to be applied in compliance with this covenant, and such amounts may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Company hereby agreeing to use reasonable efforts (as determined in the Company's reasonable business judgment) to otherwise cause the applicable Foreign Subsidiary to within one year following the date on which the respective payment would otherwise have been required, promptly take all actions reasonably required by the applicable local law, applicable organizational impediments or other impediment to permit such repatriation), and if within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Net Available Cash is permitted under the applicable local law, applicable organizational impediment or other impediment, such repatriation will be promptly effected and such repatriated Net Available Cash will be promptly (and in any event not later than five (5) Business Days after such repatriation could be made) applied (net of additional Taxes payable or reserved against as a result thereof) (whether or not repatriation actually occurs) in compliance with this covenant and (ii) to the extent that the Company has determined in good faith that repatriation of any of or all the Net Available Cash of any Foreign Disposition would have an adverse Tax cost consequence with respect to such Net Available Cash (which for the avoidance of doubt, includes, but is not limited to, any prepayment whereby doing so Holdings, the Company, any Restricted Subsidiary or any of their respective affiliates and/or equity partners would incur a tax liability, including a tax dividend, deemed dividend pursuant to Code Section 956 or a withholding tax), the Net Available Cash so affected may be retained by the applicable Foreign Subsidiary. The non-application of any prepayment amounts as a consequence of the foregoing provisions will not, for the avoidance of doubt, constitute a Default or an Event of Default.

For the purposes of clause (2) of the first paragraph of this covenant, the following will be deemed to be cash:

- (1) the assumption by the transferee of Indebtedness or other liabilities of the Company or a Restricted Subsidiary (other than Subordinated Indebtedness of the Company or a Guarantor) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness or other liability in connection with such Asset Disposition;
- (2) securities, notes or other obligations received by the Company or any Restricted Subsidiary of the Company from the transferee that are converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of such Asset Disposition;
- (3) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Company and each other Restricted Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition;

- (4) consideration consisting of Indebtedness of the Company (other than Subordinated Indebtedness) received after the Issue Date from Persons who are not the Company or any Restricted Subsidiary; and
- (5) any Designated Non-Cash Consideration received by the Company or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this covenant that is at that time outstanding, not to exceed the greater of (i) \$40.0 million; and (ii) 3.0% of the Total Assets of the Company (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value).

To the extent that the provisions of any securities laws or regulations conflict with the provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Indenture by virtue thereof.

The Credit Agreement prohibits the Issuer from purchasing any Notes and also provides that certain asset sale events with respect to the Company or the Issuer would constitute a default under the Credit Agreement. Any future credit agreements or other similar agreements to which the Company or the Issuer becomes a party may contain similar restrictions and provisions and may also prohibit the Issuer from purchasing any Notes. In the event an Asset Disposition occurs at a time when the Company or the Issuer is prohibited from purchasing the Notes, the Company or the Issuer could seek the consent of its lenders to the purchase of the Notes or could attempt to refinance the borrowings that contain such prohibition. If the Company or the Issuer does not obtain such consent or repay such borrowings, the Issuer will remain prohibited from purchasing the Notes. In such case, the Issuer's failure to purchase tendered Notes would constitute an Event of Default under the Indenture.

#### ***Limitation on Affiliate Transactions***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Company (an "*Affiliate Transaction*") involving aggregate value in excess of \$5.0 million unless:

- (1) the terms of such Affiliate Transaction taken as a whole are not materially less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate; and
- (2) in the event such Affiliate Transaction involves an aggregate value in excess of \$35.0 million, the terms of such transaction have been approved by a majority of the members of the Board of Directors of the Company.

Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in clause (2) of this paragraph if such Affiliate Transaction is approved by a majority of the Disinterested Directors, if any.

The provisions of the preceding paragraph will not apply to:

- (1) any Restricted Payment permitted to be made pursuant to the covenant described under "—Limitation on Restricted Payments," or any Permitted Investment;
- (2) any issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or

entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Company or any Restricted Subsidiary, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits or consultants' plans (including valuation, health, insurance, deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Company, in each case in the ordinary course of business or consistent with past practices;

- (3) any transaction between or among the Company and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries;
- (4) the payment of compensation, reasonable fees and reimbursement of expenses to, and customary indemnities (including under customary insurance policies) and employee benefit and pension expenses provided on behalf of, directors, officers, consultants or employees of the Company or any Restricted Subsidiary of the Company (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);
- (5) the entry into and performance of obligations of the Company or any of its Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Issue Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this covenant or to the extent not more disadvantageous to the Holders in any material respect;
- (6) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business or consistent with past practices, which are fair to the Company or the relevant Restricted Subsidiary in the reasonable determination of the Board of Directors or the senior management of the Company or the relevant Restricted Subsidiary, or are on terms no less favorable than those that could reasonably have been obtained at such time from an unaffiliated party;
- (7) any transaction between or among the Company or any Restricted Subsidiary and any Affiliate of the Company or an Associate or similar entity that would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity;
- (8) issuances or sales of Capital Stock (other than Disqualified Stock) of the Company or options, warrants or other rights to acquire such Capital Stock and the granting of registration and other customary rights in connection therewith or any contribution to capital of the Company or any Restricted Subsidiary;
- (9) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (1) of the preceding paragraph;
- (10) any purchases by the Company's Affiliates of Indebtedness or Disqualified Stock of the Company or any of its Restricted Subsidiaries the majority of which Indebtedness or Disqualified Stock is purchased by Persons who are not the Company's Affiliates; *provided* that such purchases by the

Company's Affiliates are on the same terms as such purchases by such Persons who are not the Company's Affiliates; and

- (11) transactions entered into by an Unrestricted Subsidiary, so long as not entered in contemplation of the redesignation as a Restricted Subsidiary, with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary as described under the caption "Designation of Restricted and Unrestricted Subsidiaries."

### ***Designation of Restricted and Unrestricted Subsidiaries***

The Board of Directors of the Company 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 designated as Unrestricted 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 covenant described above under the caption "—Certain Covenants—Limitation on Restricted Payments" or under one or more clauses of the definition of 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.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee a resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complies with the preceding conditions and was permitted by the covenant described above under the caption "—Certain Covenants—Limitation on Restricted Payments." If, at any time, any 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 the 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 the covenant described under the caption "—Certain Covenants—Limitation on Indebtedness," the Company will be in default of such covenant.

The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Company; *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 the covenant described under the caption "—Certain Covenants—Limitation on Indebtedness," calculated on a *pro forma* basis as if such designation had occurred at the beginning of the applicable reference period; and (2) no Default or Event of Default would be in existence before or after such designation. Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a certified copy of a resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complies with the preceding conditions.

### ***Reports***

Whether or not the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, so long as any notes are outstanding, the Company will furnish to the Trustee:

- (1) within 90 days after the end of each fiscal year, annual reports of the Company containing substantially all of the financial information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if the Company had been a reporting company under the Exchange Act (but only to the extent similar information is included in this Offering Memorandum), including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations," and (B) audited financial statements prepared in accordance with GAAP;



- (2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, quarterly reports of the Company containing substantially all of the financial information that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and (B) unaudited quarterly financial statements prepared in accordance with GAAP; and
- (3) within the time periods specified for filing Current Reports on Form 8-K after the occurrence of each event that would have been required to be reported in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act, current reports containing substantially all of the information that would have been required to be contained in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act.

Notwithstanding the foregoing, such reports (A) will not be required to comply with Section 302, Section 906 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC, or Item 10(e) of Regulation S-K (with respect to any non- GAAP financial measures contained therein) and (B) will not be required to contain the separate financial information for Guarantors or Subsidiaries whose securities are pledged to secure the Notes contemplated by Rule 3-10 or Rule 3-16 of Regulation S-X promulgated by the SEC.

In addition, the Company shall furnish to noteholders, prospective investors, broker-dealers and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the notes are not freely transferable under the Securities Act.

If at any time any of the Subsidiaries of the Company that have been designated as Unrestricted Subsidiaries have combined net assets exceeding 10% of the Company’s consolidated net assets, then the quarterly and annual financial information required by the first paragraph of this covenant will include or be accompanied by a reasonably detailed presentation of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

In the event that any parent of the Company becomes a guarantor of the Notes, the Indenture will permit the Company to satisfy its obligations in this covenant with respect to financial information relating to the Company by furnishing financial information relating to such parent; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand.

Notwithstanding the foregoing, the Company will be deemed to have furnished such reports referred to above to the Trustee and the Holders of the Notes if the Company has filed such reports with the SEC via the EDGAR filing system and such reports are publicly available; *provided, however*, that the Trustee shall have no responsibility whatsoever to determine if such filing has occurred.

#### ***Limitation on Guarantees***

The Company will not permit any of its Wholly Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly Owned Subsidiaries if such non-Wholly Owned Subsidiaries guarantee other capital markets debt of the Issuer or any Guarantor), other than a Guarantor, to Guarantee any Indebtedness of the Issuer or any Guarantor or and, unless:

- (1) such Restricted Subsidiary within 30 days executes and delivers a supplemental indenture to the Indenture providing for a senior Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or any Guarantor, if such Indebtedness is by its express



terms subordinated in right of payment to the Notes or such Guarantor's Note Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes or such Guarantor's Note Guarantee;

- (2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee until payment in full of Obligations under the Indenture; and
- (3) such Restricted Subsidiary shall deliver to the Trustee an Opinion of Counsel stating that:
  - (a) such Guarantee has been duly executed and authorized; and
  - (b) such Guarantee constitutes a valid, binding and enforceable obligation of such Restricted Subsidiary, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity;

provided that this covenant shall not be applicable (i) to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary, or (ii) in the event that the Guarantee of the Company's obligations under the Notes or the Indenture by such Subsidiary would not be permitted under applicable law, or if a consent is required thereunder and cannot be reasonably obtained in the good faith judgment of the Company.

The Company may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Guarantor to become a Guarantor, in which case, such Subsidiary shall only be required to comply with the 30-day period described above.

If any Guarantor becomes an Immaterial Subsidiary, the Company shall have the right, by execution and delivery of a supplemental indenture to the Trustee, to cause such Immaterial Subsidiary to cease to be a Guarantor, subject to the requirement described in the first paragraph above that such Subsidiary shall be required to become a Guarantor if it ceases to be an Immaterial Subsidiary (except that if such Subsidiary has been properly designated as an Unrestricted Subsidiary it shall not be so required to become a Guarantor or execute a supplemental indenture); provided, further, that such Immaterial Subsidiary shall not be permitted to Guarantee any Indebtedness of the Company or the other Guarantors, unless it again becomes a Guarantor.

### ***Merger and Consolidation***

#### ***The Company***

Neither the Company nor the Issuer will consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

- (1) the resulting, surviving or transferee Person (the "*Successor Company*") will be a Person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, Canada, Switzerland, the United Kingdom, any member of the European Union, or any state, province or division of any of the foregoing countries and the Successor Company (if not the Company or the Issuer, as the case may be) will expressly assume, by supplemental indenture, executed and delivered to the Trustee, all the obligations of the Company or the Issuer, as the case may be under the Notes and the Indenture, provided that if such Successor Company is not a corporation, a co-obligor of the Notes that is a Restricted Subsidiary is a corporation organized under such laws;

- (2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;
- (3) immediately after giving effect to such transaction, either (a) the Successor Company would be able to Incur at least an additional \$1.00 of Indebtedness pursuant to the first paragraph of the covenant described under “—Limitation on Indebtedness” or (b) the Fixed Charge Coverage Ratio would not be lower than it was immediately prior to giving effect to such transaction; and
- (4) the Company shall have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer and such supplemental indenture (if any) comply with the Indenture and an Opinion of Counsel to the effect that such supplemental indenture (if any) has been duly authorized, executed and delivered and is a legal, valid and binding agreement enforceable against the Successor Company, *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer’s Certificate as to any matters of fact, including as to satisfaction of clauses (2) and (3) above.

For purposes of this covenant, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture but in the case of a lease of all or substantially all its assets, the predecessor company will not be released from its obligations under the Indenture or the Notes.

Notwithstanding the preceding clauses (2), (3) and (4) (which do not apply to transactions referred to in this sentence), (a) any Restricted Subsidiary of the Company may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to the Company and (b) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Restricted Subsidiary. Notwithstanding the preceding clauses (2) and (3) (which do not apply to the transactions referred to in this sentence), the Company may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Company, reincorporating the Company in another jurisdiction, or changing the legal form of the Company.

There is no precise established definition of the phrase “substantially all” under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve “all or substantially all” of the property or assets of a Person.

The foregoing provisions (other than the requirements of clause (2) of the first paragraph of this covenant) shall not apply to the creation of a new Subsidiary as a Restricted Subsidiary of the Company.

#### *Guarantors*

No Guarantor (other than the Company) may:

- (1) consolidate with or merge with or into any Person, or
- (2) sell, convey, transfer or dispose of, all or substantially all its assets, in one transaction or a series of related transactions, to any Person, or

- (3) permit any Person to merge with or into the Guarantor, unless:
  - (A) the other Person is the Issuer or a Guarantor or becomes a Guarantor concurrently with the transaction; or
  - (B) (1) either (x) a Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all of the obligations of the Guarantor under its Guarantee of the Notes; and (2) immediately after giving effect to the transaction, no Default has occurred and is continuing; or
  - (C) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor (in each case other than to the Company or a Restricted Subsidiary) otherwise permitted by the Indenture

There is no precise established definition of the phrase “substantially all” under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve “all or substantially all” of the property or assets of a Person.

### Events of Default

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

- (1) default in any payment of interest or Additional Interest, if any, on any Note when due and payable, continued for 30 days;
- (2) default in the payment of the principal amount of or premium, if any, on any Note issued under the Indenture when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
- (3) failure to comply with the Company’s agreements or obligations contained in the Indenture for 60 days after written notice by the Trustee on behalf of the Holders or by the Holders of 30% in principal amount of the outstanding Notes;
- (4) default 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 (or the payment of which is Guaranteed by the Company any of its Restricted Subsidiaries) other than Indebtedness owed to the Company or a Restricted Subsidiary whether such Indebtedness or Guarantee now exists, or is created after the date hereof, which default:
  - (a) is caused by a failure to pay principal of such Indebtedness, at its stated final maturity (after giving effect to any applicable grace periods) provided in such Indebtedness (“*payment default*”); or
  - (b) results in the acceleration of such Indebtedness prior to its stated final maturity (the “*cross acceleration provision*”);

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 \$35.0 million or more;

- (5) certain events of bankruptcy, insolvency or court protection of the Company or a Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited

consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary (the “*bankruptcy provisions*”);

- (6) failure by the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries) would constitute a Significant Subsidiary), to pay final judgments aggregating in excess of \$35.0 million other than any judgments covered by indemnities provided by, or insurance policies issued by, reputable and creditworthy issuers, which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed (the “*judgment default provision*”); or
- (7) any Guarantee of the Notes ceases to be in full force and effect, other than in accordance with the terms of the Indenture or a Guarantor denies or disaffirms its obligations under its Guarantee of the Notes, other than in accordance with the terms thereof or upon release of such Guarantee in accordance with the Indenture.

However, a default under clauses (3), (4) or (6) of this paragraph will not constitute an Event of Default until the Trustee or the Holders of 30% in principal amount of the outstanding Notes notify the Company of the default and, with respect to clauses (3) and (6) the Company does not cure such default within the time specified in clauses (3) or (6), as applicable, of this paragraph after receipt of such notice.

If an Event of Default (other than an Event of Default described in clause (5) above with respect to the Company) occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 30% in principal amount of the outstanding Notes by written notice to the Company and the Trustee, may, and the Trustee (subject to certain conditions) at the request of such Holders shall, declare the principal of, and accrued and unpaid interest, if any, on all the Notes to be due and payable and to the extent such Event of Default arises from the failure to pay the redemption price that is then due and not subject to any conditions in connection with an optional redemption, the premium then due with respect to such optional redemption on all the Notes to be due and payable. Upon such a declaration, the principal of, and accrued and unpaid interest, if any, on the Notes will be due and payable immediately together with any premium new with respect to an optional redemption. In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (4) under “—Events of Default” has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (4) shall be remedied or cured, or waived by the holders of the Indebtedness, or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, in each case, within 30 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest, including Additional Interest, if any, on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

If an Event of Default described in clause (5) above with respect to the Company occurs and is continuing the principal of, and accrued and unpaid interest, if any, on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

The Holders of a majority in principal amount of the outstanding Notes under the Indenture may waive all past or existing Defaults or Events of Default (except with respect to nonpayment of principal, premium or interest, including Additional Interest, if any) and rescind any such acceleration with respect to such Notes and its consequences if rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

If an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under the Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against any fee, loss, liability or expense. Except to enforce the right to receive payment of principal or interest when due, no Holder may pursue any remedy with respect to the Indenture or the Notes unless:

- (1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (2) Holders of at least 30% in principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;
- (3) such Holders have offered in writing the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt of the written request and the offer of security or indemnity; and
- (5) the Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a written direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the Holders of a majority in principal amount of the outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Indenture will provide that, in the event an Event of Default has occurred and is continuing, the Trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee will be entitled to indemnification satisfactory to it against all liabilities, losses, expenses caused by taking or not taking such action.

The Indenture will provide that if a Default occurs and is continuing and the Trustee is informed of such occurrence by the Company in writing, the Trustee must give notice of the Default to the Holders within 60 days after being notified by the Company. Except in the case of a Default in the payment of principal of, or premium, if any, or interest on any Note, the Trustee may withhold notice if and so long as it in good faith determines that withholding notice is in the interests of the Holders. The Company is required to deliver to the Trustee, within 120 days after the end of each fiscal year, an Officer's Certificate indicating whether the signers thereof know of any Default that occurred during the previous year. The Company is required to deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any events of which they are aware which would constitute certain Defaults, their status and what action the Company is taking or proposes to take in respect thereof.

Notwithstanding any other provision of the Indenture, the sole remedy for an Event of Default relating to the failure to comply with the reporting obligations described above under the heading "—Certain Covenants—Reports," and for any failure to comply with the requirements of Section 314(a) of the Trust Indenture Act, if any, will for the 60 days after the occurrence of such an Event of Default consist exclusively of the right to receive additional interest on the principal amount of the Notes at a rate equal to 0.25% per annum. This additional interest will be payable in the same manner and subject to the same terms as other interest payable under the Indenture. This additional interest will accrue on all outstanding Notes from and including the date on which an Event of Default relating to a failure to comply with the reporting obligations described above under the heading "—Certain Covenants—Reports" or Section 314(a) of the Trust Indenture Act first occurs, if applicable, to but excluding the 60th day thereafter (or such earlier date on which the Event of Default relating to such reporting obligations is cured or waived). If the Event of Default resulting from such failure to comply with

the reporting obligations is continuing on such 60th day, such additional interest will cease to accrue and the Notes will be subject to the other remedies provided under the heading “—Events of Default.”

The Notes will provide for the Trustee to take action on behalf of the Holders in certain circumstances, but only if the Trustee is indemnified to its satisfaction. It may not be possible for the Trustee to take certain actions in relation to the Notes and, accordingly, in such circumstances the Trustee will be unable to take action, notwithstanding the provision of an indemnity to it, and it will be for Holders to take action directly.

### **Amendments and Waivers**

Subject to certain exceptions, the Note Documents may be amended, supplemented or otherwise modified with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Notes) and, subject to certain exceptions, any default or compliance with any provisions thereof may be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Notes). However an amendment or waiver may not, with respect to any such Notes held by a non-consenting Holder:

- (1) reduce the principal amount of such Notes whose Holders must consent to an amendment;
- (2) reduce the stated rate of or extend the stated time for payment of interest on any such Note (other than provisions relating to Change of Control and Asset Dispositions);
- (3) reduce the principal of or extend the Stated Maturity of any such Note;
- (4) reduce the premium payable upon the redemption of any such Note or change the time at which any such Note may be redeemed, in each case as described above under “—Optional Redemption”;
- (5) make any such Note payable in money other than that stated in such Note;
- (6) impair the right of any Holder to receive payment of principal of and interest on such Holder’s Notes on or after the due dates therefor or to institute suit for the enforcement of any such payment on or with respect to such Holder’s Notes;
- (7) waive a Default or Event of Default with respect to the nonpayment of principal, premium, interest or Additional Interest (except pursuant to a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of such Notes and a waiver of the payment default that resulted from such acceleration); or
- (8) make any change in the amendment or waiver provisions which require the Holders’ consent described in this sentence.

Notwithstanding the foregoing, without the consent of any Holder, the Company and the Trustee may amend or supplement any Note Documents to:

- (1) cure any ambiguity, omission, mistake, defect, error or inconsistency, conform any provision to this “Description of Notes,” or reduce the minimum denomination of the Notes;
- (2) provide for the assumption by a successor Person of the obligations of the Company under any Note Document;
- (3) provide for uncertificated Notes in addition to or in place of certificated Notes;
- (4) add to the covenants or provide for a Guarantee for the benefit of the Holders or surrender any right or power conferred upon the Company or any Restricted Subsidiary;



- (5) make any change that does not adversely affect the rights of any Holder in any material respect;
- (6) make such provisions as necessary (as determined in good faith by the Company) for the issuance of Additional Notes;
- (7) to provide for any Restricted Subsidiary to provide a Guarantee in accordance with the covenant described under “—Certain Covenants—Limitation on Indebtedness,” to add Guarantees with respect to the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination, discharge or retaking of any Guarantee or Lien with respect to or securing the Notes when such release, termination, discharge or retaking is provided for under the Indenture;
- (8) at the Company’s election, comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act, if such qualification is required;
- (9) to evidence and provide for the acceptance and appointment under the Indenture of a successor Trustee pursuant to the requirements thereof or to provide for the accession by the Trustee to any Note Document; or
- (10) to make any amendment to the provisions of the Indenture relating to the transfer and legending of Notes as permitted by the Indenture, including, without limitation, to facilitate the issuance and administration of Notes; *provided, however*, that (i) compliance with the Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes.

The consent of the Holders is not necessary under the Indenture to approve the particular form of any proposed amendment of any Note Document. It is sufficient if such consent approves the substance of the proposed amendment. A consent to any amendment or waiver under the Indenture by any Holder of Notes given in connection with a tender of such Holder’s Notes will not be rendered invalid by such tender.

## **Defeasance**

The Issuer at any time may terminate all obligations of the Issuer under the Notes and the Indenture (“*legal defeasance*”) and cure all then existing Defaults and Events of Default, except for certain obligations, including those respecting the defeasance trust, the rights, powers, trusts, duties, immunities and indemnities of the Trustee and the obligations of the Issuer in connection therewith and obligations concerning issuing temporary Notes, registrations of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust.

The Issuer at any time may terminate its obligations under the covenants described under “—Certain Covenants” (other than clauses (1) and (2) of “—Merger and Consolidation”) and “—Change of Control” and the default provisions relating to such covenants described under “—Events of Default” above, the operation of the cross-default upon a payment default, the cross acceleration provisions, the bankruptcy provisions with respect to the Company and Significant Subsidiaries, the judgment default provision and the guarantee provision described under “—Events of Default” above (“*covenant defeasance*”).

The Issuer at its option at any time may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Issuer exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect to the Notes. If the Issuer exercises its covenant defeasance option with respect to the Notes, payment of the Notes may not be accelerated because of an Event of Default specified in clause (3), (4), (5) (with respect only to the Company and Significant Subsidiaries), (6) or (7) under “—Events of Default” above.



In order to exercise either defeasance option, the Company must irrevocably deposit in trust (the “*defeasance trust*”) with the Trustee, as paying agent, cash in dollars or U.S. Government Obligations or a combination thereof deemed sufficient in the opinion of a nationally recognized firm of public accountants for the payment of principal and Additional Interest, premium, if any, and interest on the Notes to redemption or maturity, as the case may be, and must comply with certain other conditions, including delivery to the Trustee of:

- (1) an Opinion of Counsel in the United States stating that Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred (and in the case of legal defeasance only, such Opinion of Counsel in the United States must be based on a ruling of the U.S. Internal Revenue Service or change in applicable U.S. federal income tax law since the issuance of the Notes);
- (2) an Opinion of Counsel to the effect that, as of the date of such opinion and subject to customary assumptions and exclusions, following the deposit, the trust funds will not be subject to the effect of Section 547 of Title 11 of the United States Code, as amended;
- (3) an Officer’s Certificate stating that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying, defrauding or preferring any creditors of the Issuer; and
- (4) an Officer’s Certificate and an Opinion of Counsel (which opinion of counsel may be subject to customary assumptions and exclusions), each stating that that all conditions precedent provided for or relating to legal defeasance or covenant defeasance, as the case may be, have been complied with.

### **Satisfaction and Discharge**

The Indenture will be discharged and cease to be of further effect (except as to surviving rights of conversion or transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when (1) either (a) all the Notes previously authenticated and delivered (other than certain lost, stolen or destroyed Notes and certain Notes for which provision for payment was previously made and thereafter the funds have been released to the Issuer) have been delivered to the Trustee for cancellation; or (b) all Notes not previously delivered to the Trustee for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer; (2) the Issuer has deposited or caused to be deposited with the Trustee, money or U.S. Government Obligations, or a combination thereof deemed sufficient in the opinion of a nationally recognized firm of public accountants, as applicable, in an amount sufficient to pay and discharge the entire indebtedness on the Notes not previously delivered to the Trustee for cancellation, for principal, premium, if any, and interest and Additional Interest, if any, to the date of deposit (in the case of Notes that have become due and payable), or to the Stated Maturity or redemption date, as the case may be; (3) the Issuer has paid or caused to be paid all other sums payable under the Indenture; and (4) the Issuer has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel each to the effect that all conditions precedent under the “—Satisfaction and Discharge” section of the Indenture relating to the satisfaction and discharge of the Indenture have been complied with; *provided* that any such counsel may rely on any Officer’s Certificate as to matters of fact (including as to compliance with the foregoing clauses (1), (2) and (3)).

### **No Personal Liability of Directors, Officers, Employees and Shareholders**

No director, officer, employee, incorporator, stockholder or shareholder of the Company or any of its respective Subsidiaries or Affiliates, as such, shall have any liability for any obligations of the Issuer or any Guarantor under the Note Documents or for any claim based on, in respect of, or by reason of, such 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. Such waiver may not be effective to waive liabilities under the U.S. federal securities laws and it is the view of the SEC that such a waiver is against public policy.

### **Concerning the Trustee and Certain Agents**

Wells Fargo Bank, National Association will be appointed as Trustee and Wells Fargo Bank, National Association will be appointed as Agent (in each of such capacities as paying agent, registrar and transfer agent) under the Indenture. The Indenture will provide that, except during the continuance of an Event of Default, the Trustee will perform only such duties as are set forth specifically in such Indenture. During the existence of an Event of Default, the Trustee will exercise such of the rights and powers vested in it under the Indenture and use the same degree of care that a prudent Person would use in conducting its own affairs. The permissive rights of the Trustee to take or refrain from taking any action enumerated in the Indenture will not be construed as an obligation or duty.

The Indenture will impose certain limitations on the rights of the Trustee, should it become a creditor of the Company, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions with the Company and its Affiliates and Subsidiaries.

The Indenture sets out the terms under which the Trustee may retire or be removed, and replaced. Such terms will include, among others, (1) that the Trustee may be removed at any time by the Holders of a majority in principal amount of then outstanding Notes, or may resign at any time by giving written notice to the Issuer and (2) that if the Trustee at any time (a) has or acquires a conflict of interest that is not eliminated, (b) fails to meet certain minimum limits regarding the aggregate of its capital and surplus or (c) becomes incapable of acting as Trustee or becomes insolvent or bankrupt, then the Issuer may remove the Trustee, or any Holder who has been a bona fide Holder for not less than six months may petition any court for removal of the Trustee and appointment of a successor Trustee.

Any removal or resignation of the Trustee shall not become effective until the acceptance of appointment by the successor Trustee.

The Indenture will contain provisions for the indemnification of the Trustee for any loss, liability, taxes and expenses incurred without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the Indenture.

### **Notices**

All notices to Holders of Notes will be validly given if electronically delivered or mailed to them at their respective addresses in the register of the Holders of the Notes, if any, maintained by the registrar. For so long as any Notes are represented by global notes, all notices to Holders of the Notes will be delivered to DTC, delivery of which shall be deemed to satisfy the requirements of this paragraph, which will give such notices to the Holders of book-entry interests.

Each such notice shall be deemed to have been given on the date of such publication or, if published more than once on different dates, on the first date on which publication is made; *provided* that, if notices are mailed, such notice shall be deemed to have been given on the later of such publication and the seventh day after being so mailed. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to him if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

## Governing Law

The Indenture and the Notes, including any Note Guarantees, and the rights and duties of the parties thereunder shall be governed by and construed in accordance with the laws of the State of New York.

## Certain Definitions

*“Acquired Indebtedness”* means Indebtedness (1) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary, or (2) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with such Person becoming a Restricted Subsidiary of the Company or such acquisition or (3) of a Person at the time such Person merges with or into or consolidates or otherwise combines with the Company or any Restricted Subsidiary. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of assets and, with respect to clause (3) of the preceding sentence, on the date of the relevant merger, consolidation or other combination.

*“Additional Assets”* means:

- (1) any property or assets (other than Capital Stock) used or to be used by the Company, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in a Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);
- (2) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary of the Company; or
- (3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary of the Company.

*“Additional Interest”* means all additional interest then owing on the Notes pursuant to the Registration Rights Agreement.

*“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 the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

*“Applicable Premium”* means the greater of (A) 1.0% of the principal amount of such Note and (B) on any redemption date, the excess (to the extent positive) of:

- (a) the present value at such redemption date of (i) the redemption price of such Note at \_\_\_\_\_, 2017 (such redemption price (expressed in percentage of principal amount) being set forth in the table under “—Optional Redemption” (excluding accrued but unpaid interest)), plus (ii) all required interest payments due on such Note to and including such date set forth in clause (i) (excluding accrued but unpaid interest), computed upon the redemption date using a discount rate equal to the Treasury Rate at such redemption date plus 50 basis points; over
- (b) the then outstanding principal amount of such Note;

in each case, as calculated by the Company or on behalf of the Company by such Person as the Company shall designate.

“*Asset Disposition*” means:

- (a) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Leaseback Transaction) of the Company (other than Capital Stock of the Company) or any of its Restricted Subsidiaries (each referred to in this definition as a “*disposition*”); or
- (b) the issuance or sale of Capital Stock of any Restricted Subsidiary (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with the covenant described under “—Certain Covenants—Limitation on Indebtedness” or directors’ qualifying shares and shares issued to foreign nationals as required under applicable law), whether in a single transaction or a series of related transactions;

in each case, other than:

- (1) a disposition by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary;
- (2) a disposition of cash , Cash Equivalents;
- (3) a disposition of inventory or other assets in the ordinary course of business;
- (4) a disposition of obsolete, surplus or worn out equipment or other assets or equipment or other assets that are no longer useful in the conduct of the business of the Company and its Restricted Subsidiaries;
- (5) transactions permitted under “—Certain Covenants—Merger and Consolidation—The Company” or a transaction that constitutes a Change of Control;
- (6) an issuance of Capital Stock by a Restricted Subsidiary to the Company or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors;
- (7) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Company) of less than \$25.0 million;
- (8) any Restricted Payment that is permitted to be made, and is made, under the covenant described above under “—Certain Covenants—Limitation on Restricted Payments” and the making of any Permitted Payment or Permitted Investment or, solely for purposes of clause (3) of the first paragraph under “—Certain Covenants Limitation on Sales of Assets and Subsidiary Stock,” asset sales, the proceeds of which are used to make such Restricted Payments or Permitted Investments;
- (9) dispositions in connection with Permitted Liens and granting of Permitted Liens;
- (10) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or consistent with past practices or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;
- (11) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, sub-licenses, leases or subleases of other property, in each case, in the ordinary course of business or consistent with past practices;

- (12) foreclosure, condemnation or any similar action with respect to any property or other assets;
- (13) the sale or discount (with or without recourse, and on customary or commercially reasonable terms and for credit management purposes) of accounts receivable or notes receivable arising in the ordinary course of business or consistent with past practices, or the conversion or exchange of accounts receivable for notes receivable;
- (14) any disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary;
- (15) any disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Company or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;
- (16) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business;
- (17) any financing transaction with respect to property constructed, acquired, replaced, repaired or improved (including any reconstruction, refurbishment, renovation and/or development of real property) by the Company or any Restricted Subsidiary after the Issue Date, including Sale and Leaseback Transactions and asset securitizations, permitted by the Indenture; and
- (18) any surrender, amendment or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind.

“*Associate*” means (i) any Person engaged in a Similar Business of which the Company or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock or (ii) any joint venture entered into by the Company or any Restricted Subsidiary of the Company.

“*Board of Directors*” means (1) with respect to the Company or any corporation, the board of directors or managers, as applicable, of the corporation, or any duly authorized committee thereof; (2) with respect to any partnership, the board of directors or other governing body of the general partner of the partnership or any duly authorized committee thereof; and (3) with respect to any other Person, the board or any duly authorized committee of such Person serving a similar function. Whenever any provision requires any action or determination to be made by, or any approval of, a Board of Directors, unless otherwise stated, such Board of Directors is of the Company and such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval).

“*Business Day*” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York, or the place of payment on the Notes in the United States are authorized or required by law to close.

“*Capital Stock*” of any Person means any and all shares of, rights to purchase, warrants, options or depositary receipts for, or other equivalents of or partnership or other interests in (however designated), equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“*Capitalized Lease Obligations*” means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes on the basis of GAAP. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination

thereof is to be made as determined on the basis of 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 such lease may be terminated without penalty.

“Cash Equivalents” means:

- (1) (a) United States dollars, Euro, or any national currency of any member state of the European Union; or (b) any other foreign currency held by the Company and the Restricted Subsidiaries in the ordinary course of business or consistent with past practices;
- (2) securities issued or directly and fully Guaranteed or insured by the United States or Canadian governments, a member state of the European Union or, in each case, any agency or instrumentality of thereof (*provided* that the full faith and credit of such country or such member state is pledged in support thereof), having maturities of not more than two years from the date of acquisition;
- (3) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers’ acceptances having maturities of not more than one year from the date of acquisition thereof issued by (x) any lender affiliate thereof or (y) by any bank or trust company (a) whose commercial paper is rated at least “A-2” or the equivalent thereof by S&P or at least “P-2” or the equivalent thereof by Moody’s (or if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) or (b) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of \$100 million;
- (4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) entered into with any Person referenced in clause (3) above;
- (5) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Person referenced in clause (3);
- (6) commercial paper rated at the time of acquisition thereof at least “A-2” or the equivalent thereof by S&P or “P-2” or the equivalent thereof by Moody’s or carrying an equivalent rating by a Nationally Recognized Statistical Rating Organization, if both of the two named rating agencies cease publishing ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in any case maturing within one year after the date of acquisition thereof;
- (7) readily marketable direct obligations issued by any state, commonwealth or territory of the United States of America, any province of Canada, any member of the European Union, any other foreign government, or any political subdivision or taxing authority thereof, in each case, having one of the two highest rating categories obtainable from either Moody’s or S&P (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of not more than two years from the date of acquisition;
- (8) Indebtedness or preferred stock issued by Persons with a one of the three highest ratings from S&P or Moody’s (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of 12 months or less from the date of acquisition;
- (9) bills of exchange issued in the United States, Canada, a member state of the European Union or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);



- (10) interests in any investment company, money market or enhanced high yield fund which invests 90% or more of its assets in instruments of the type specified in clauses (1) through (9) above;
- (11) instruments and investments of the type and maturity described in clause (1) through (10) denominated in any foreign currency or of foreign obligors, which investments or obligors are, in the reasonable judgment of the Company, comparable in investment quality to those referred to above; and
- (12) solely with respect to any Restricted Subsidiary that is a Foreign Subsidiary, investments of comparable tenor and credit quality to those described in the foregoing clauses (2) through (11) customarily utilized in countries in which such Foreign Subsidiary operates for short term cash management purposes.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than set forth in clause (1) above; provided that such amounts are converted into currencies listed in clause (1) within 10 Business Days following receipt of such amounts.

*“Cash Management Services”* means any of the following to the extent not constituting a line of credit (other than an overnight draft facility that is not in default): ACH transactions, treasury and/or cash management services, including, without limitation, controlled disbursement services, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services.

*“Change of Control”* means:

- (1) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) any “person” or “group” of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Issue Date), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Issue Date), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company; or
- (2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation or other business combination transaction), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole to a Person, other than a Restricted Subsidiary.

Notwithstanding the foregoing, a transaction will not be deemed to involve a Change of Control if (1) the Company becomes a direct or indirect wholly-owned subsidiary of a holding company and (2)(A) the direct or indirect holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of our Voting Stock immediately prior to that transaction or (B) immediately following that transaction no person (other than a holding company satisfying the requirements of this sentence) is the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of such holding company.

*“Code”* means the United States Internal Revenue Code of 1986, as amended.

*“Consolidated Depreciation and Amortization Expense”* means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including amortization of deferred financing fees of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.



“Consolidated EBITDA” for any period means the Consolidated Net Income for such period:

(1) increased (without duplication) by:

- (a) provision for taxes based on income or profits or capital, including, without limitation, federal, state, provincial, local, foreign, unitary, excise, property, franchise and similar taxes and foreign withholding and similar taxes (including penalties and interest) of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; *plus*
- (b) Fixed Charges of such Person for such period (including (x) net losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk and (y) costs of surety bonds in connection with financing activities), plus amounts excluded from the definition of “Consolidated Interest Expense” pursuant to clauses (w), (x) and (y) in clause (1) thereof, to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income; *plus*
- (c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same were deducted (and not added back) in computing Consolidated Net Income; *plus*
- (d) any fees, costs, expenses or charges (other than depreciation or amortization expense) related to any actual, proposed or contemplated issuance or registration (actual or proposed) of an Equity Offering, any Investment, acquisition, disposition, recapitalization, Restricted Payment or the incurrence or registration (actual or proposed) of Indebtedness (including a refinancing thereof) (in each case, whether or not successful or consummated), including (i) such fees, expenses or charges related to the offering of the Notes and the Credit Agreement, and (ii) any amendment or other modification of the Notes or the Credit Agreement, in each case, whether or not consummated, deducted (and not added back) in computing Consolidated Net Income; *plus*
- (e) the amount of any restructuring charge, reserve, integration cost, or other business optimization expense or cost (including charges directly related to implementation of cost-savings initiatives), that is deducted (and not added back) in such period in computing Consolidated Net Income including, without limitation, those related to severance, retention, signing bonuses, relocation; *plus*
- (f) recruiting and other employee related costs, future lease commitments and costs related to the opening and closure and/or consolidation of facilities; *plus*
- (g) any other non-cash charges, write-downs, expenses, losses or items reducing Consolidated Net Income for such period including any impairment charges or the impact of purchase accounting (excluding any such non-cash charge, write-down or item to the extent it represents an accrual or reserve for a cash expenditure for a future period) or other items classified by the Company as special items less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash in any future period); *plus*
- (h) the amount of cost savings, operating expense reductions, other operating improvements and initiatives and synergies projected by the Company in good faith to be reasonably anticipated to be realizable in connection with any Investment, acquisition, disposition, merger, consolidation, reorganization or restructuring (each, a “Specified Transaction”), taken or

initiated prior to or during such period (calculated on a *pro forma* basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized or expected to be realized prior to or during such period from such actions; provided that (x) such cost savings are reasonably identifiable and factually supportable and (y) such actions have been taken or are to be taken within 18 months of such Specified Transaction and (z) the aggregate amount of such cost savings, operating expense reductions, other operating improvements or synergies do not exceed 20% of Consolidated EBITDA in any four quarter period; *plus*

- (i) any costs or expense incurred by the Company or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Company or Net Cash Proceeds of an issuance of equity interest of the Company (other than Disqualified Stock) solely to the extent that such Net Cash Proceeds are excluded from the calculation set forth in clause (3) of the first paragraph under “Certain Covenants—Limitation on Restricted Payments”; *plus*
  - (j) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*
  - (k) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-wholly owned Subsidiary deducted in calculating Consolidated Net Income (and not added back in such period to Consolidated Net Income);
- (2) decreased (without duplication) by (a) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase Consolidated EBITDA in such prior period; plus (b) all cash payments made during such period to the extent made on account of non-cash reserves and other non-cash charges added back to Consolidated Net Income pursuant to clause (g) above in a previous period (it being understood that this clause (2)(b) shall not be utilized in reversing any non-cash reserve or charge added to Consolidated Net Income), plus (c) the amount of any minority interest income consisting of Subsidiary loss attributable to minority equity interests of third parties in any non- wholly owned Subsidiary added to Consolidated Net Income (and not deducted in such period from Consolidated Net Income); and
- (3) increased or decreased (without duplication) by, as applicable, any adjustments resulting from the application of Accounting Standards Codification Topic 460 or any comparable regulation.

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

- (1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances or any similar facilities or financing and hedging

agreements, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of any Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any, pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (t) penalties and interest relating to taxes, (u) accretion or accrual of discounted liabilities other than Indebtedness, (v) any expense resulting from the discounting of any Indebtedness in connection with the application of purchase accounting in connection with any acquisition, (w) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (x) any expensing of bridge, commitment and other financing fees and (y) interest with respect to Indebtedness of any parent of such Person appearing upon the balance sheet of such Person solely by reason of push-down accounting under GAAP; plus

- (2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; less
- (3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“*Consolidated Net Income*” means, with respect to any Person, for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis on the basis of GAAP; *provided, however*, that there will not be included in such Consolidated Net Income:

- (1) subject to the limitations contained in clause (3) below, any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that any equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed during such period to the Company or a Restricted Subsidiary as a dividend or other distribution or return on investment (subject, in the case of a dividend or other distribution or return on investment to a Restricted Subsidiary, to the limitations contained in clause (2) below);
- (2) solely for the purpose of determining the amount available for Restricted Payments under clause (c)(i) of the first paragraph of the covenant described under “—Certain Covenants— Limitation on Restricted Payments,” any net income (loss) of any Restricted Subsidiary (other than the Guarantors) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company or a Guarantor by operation of the terms of such Restricted Subsidiary’s charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its shareholders (other than (a) restrictions that have been waived or otherwise released, and (b) restrictions pursuant to Credit Agreement, the Notes or the Indenture, except that the Company’s equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that could have been distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause);
- (3) any net gain (or loss) realized upon the sale or other disposition of any asset or disposed operations of the Company or any Restricted Subsidiaries (including pursuant to any Sale and Leaseback

Transaction) which is not sold or otherwise disposed of in the ordinary course of business or consistent with past practices (as determined in good faith by an Officer or the Board of Directors of the Company);

- (4) any extraordinary, exceptional, unusual or nonrecurring gain, loss, charge or expense or any charges, expenses or reserves in respect of any restructuring, redundancy or severance expense;
- (5) the cumulative effect of a change in accounting principles
- (6) any (i) non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards and any non-cash deemed finance charges in respect of any pension liabilities or other provisions and (ii) income (loss) attributable to deferred compensation plans or trusts;
- (7) all deferred financing costs written off and premiums paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness and any net gain (loss) from any write-off or forgiveness of Indebtedness;
- (8) any unrealized gains or losses in respect of Hedging Obligations or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations;
- (9) any unrealized foreign currency transaction gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;
- (10) any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Company or any Restricted Subsidiary owing to the Company or any Restricted Subsidiary;
- (11) any purchase accounting effects including, but not limited to, adjustments to inventory, property and equipment, software and other intangible assets and deferred revenue in component amounts required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Company and the Restricted Subsidiaries), as a result of any consummated acquisition, or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);
- (12) any goodwill or other intangible asset impairment charge or write-off;
- (13) any after-tax effect of income (loss) from the early extinguishment or cancellation of Indebtedness or Hedging Obligations or other derivative instruments;
- (14) accruals and reserves that are established within twelve months after the Issue Date that are so required to be established as a result of the transactions in connection with the Offering in accordance with GAAP;
- (15) [reserved];
- (16) cash and non-cash charges, paid or accrued, and gains resulting from the application of Financial Accounting Standards No. 141R (Accounting Standards Codification Topic 805) (including with respect to earn-outs incurred by the Company or any of its Restricted Subsidiaries);

- (17) proceeds from any business interruption insurance to the extent not already included in Consolidated Net Income;
- (18) the amount of any expense to the extent a corresponding amount is received in cash by the Company and the Restricted Subsidiaries from a Person other than the Company or any Restricted Subsidiaries (with no requirements to repay such amounts and no other encumbrances associated therewith), provided such payment has not been included in determining Consolidated Net Income (it being understood that if the amounts received in cash under any such agreement in any period exceed the amount of expense in respect of such period, such excess amounts received may be carried forward and applied against expense in future periods).

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall exclude (i) any expenses and charges that are reimbursed by indemnification or other reimbursement provisions, or so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be indemnified or reimbursed (and such amount is in fact reimbursed within 365 days of the date of such charge or payment (with a deduction for any amount so added back to the extent not so reimbursed within such 365 days)), in connection with any investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, (ii) to the extent covered by insurance and actually reimbursed, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and such amount is (A) not denied by the applicable carrier in writing within 180 days and (B) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption.

*“Consolidated Total Indebtedness”* means, as of any date of determination, (a) the aggregate principal amount of Indebtedness for borrowed money (other than Indebtedness with respect to Cash Management Services and intercompany Indebtedness) of the Company and its Restricted Subsidiaries, letters of credit (only in respect of any unreimbursed drawings thereunder), debt obligations evidenced by promissory notes and similar instruments and any Guarantees in respect of the foregoing or any Liens on the assets of the Company or any Restricted Subsidiary securing any of the foregoing outstanding on such date plus (b) the aggregate amount of all Disqualified Stock of the Company and all Disqualified Stock and Preferred Stock of any Restricted Subsidiary minus (c) the aggregate amount of cash and Cash Equivalents included in the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the most recent fiscal period for which internal financial statements of the Company are available with such pro forma adjustments as are consistent with the pro forma adjustments set forth in the definition of “Fixed Charge Coverage Ratio” and as determined in good faith determined by the Company.

*“Consolidated Total Leverage Ratio”* means, as of any date of determination, the ratio of (x) Consolidated Total Indebtedness as of such date to (y) the aggregate amount of Consolidated EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Company are available, in each case with such pro forma adjustments as are consistent with the pro forma adjustments set forth in the definition of “Fixed Charge Coverage Ratio.”

*“Consolidated Total Secured Leverage Ratio”* means, as of any date of determination, the ratio of (x) Consolidated Total Indebtedness secured by a Lien as of such date to (y) the aggregate amount of Consolidated EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Company are available, in each case with such pro forma adjustments as are consistent with the pro forma adjustments set forth in the definition of “Fixed Charge Coverage Ratio;” *provided, however*, that solely for purposes of the calculation of the Consolidated Total Secured Leverage Ratio, in connection with the incurrence of any Lien pursuant to

clause (31) of the definition of “Permitted Liens,” (i) the Company and its Restricted Subsidiaries must treat the maximum amount of Indebtedness that is permitted to be incurred pursuant to clause (1)(A) of the second paragraph of the covenant described above under the caption “—Certain Covenants—Limitation on Indebtedness” at the time of such calculation as being Incurred and outstanding at such time, and (ii) the calculation shall not give effect to any Indebtedness Incurred on such determination date secured pursuant to clause (29) of the definition of “Permitted Lien.”

“*Contingent Obligations*” means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that does not constitute Indebtedness (“*primary obligations*”) of any other Person (the “*primary obligor*”), including any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (2) to advance or supply funds:
  - (a) for the purchase or payment of any such primary obligation; or
  - (b) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“*Credit Agreement*” means the Credit Agreement dated as of August 17, 2010, by and among the Company, the Issuer, Cott Beverages Limited, Cliffstar LLC, and any additional subsidiaries of the Company which may provide credit support party thereto, the Lenders party thereto, JPMorgan Chase Bank, N.A., London Branch, as UK Security Trustee, JPMorgan Chase Bank, N.A., as Administrative Agent and Administrative Collateral Agent, General Electric Capital Corporation, as Co-Collateral Agent, and the other parties party thereto, as the same was amended by that certain Amendment No.1 to Credit Agreement, dated as of April 19, 2012, and further amended by that certain Amendment No.2 to Credit Agreement, dated as of July 19, 2012, and further amended by that certain Amendment No.3 to Credit Agreement, dated as of October 22, 2013, and further amended by that certain Amendment No.4 to Credit Agreement, dated as of June , 2014, together with the related documents thereto (including the revolving loans thereunder, any letters of credit and reimbursement obligations related thereto, any Guarantees, security documents, mortgages, instruments and security agreements), as amended, extended, renewed, restated, refunded, replaced, restructured, refinanced, supplemented, modified or otherwise changed (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions) from time to time, and any one or more agreements (and related documents) governing Indebtedness, including indentures, incurred to refinance, amend, extend, renew, restate, refund, replace, restructure, supplement or modify, substitute, supplement, replace or add to (including increasing the amount available for borrowing or adding or removing any Person as a borrower, issuer or guarantor thereunder), in whole or in part, the borrowings and commitments then outstanding or permitted to be outstanding under such Credit Agreement, refinance to different lenders or one or more successors to the Credit Agreement or one or more new credit agreements.

“*Credit Facility*” means, with respect to the Company or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements (including the Credit Agreement or commercial paper facilities, receivables financing and overdraft facilities) with banks, other institutions or investors providing for revolving credit loans, term loans, notes, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables),



letters of credit or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or other banks or institutions and whether provided under the original Credit Agreement or one or more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any guarantee, Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term “Credit Facility” shall include any agreement or instrument (1) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Company as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder, (4) changing the administrative agent or lenders or (5) otherwise altering the terms and conditions thereof.

“*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; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

“*Designated Non-Cash Consideration*” means the fair market value (as determined in good faith by the Company) of non-cash consideration received by the Company or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with the covenant described under “—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock.”

“*Disinterested Director*” means, with respect to any Affiliate Transaction, a member of the Board of Directors of the Company having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of Directors of the Company shall be deemed not to have such a financial interest by reason of such member’s holding Capital Stock of the Company or any options, warrants or other rights in respect of such Capital Stock.

“*Disqualified Stock*” means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

- (1) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise; or
- (2) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part, in each case on or prior to the earlier of (a) the Stated Maturity of the Notes or (b) the date on which there are no Notes outstanding; *provided, however*, that (i) only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever



defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with the covenant described under “—Certain Covenants—Limitation on Restricted Payments;” *provided, however*, that if such Capital Stock is issued 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 shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“*Domestic Subsidiary*” means, with respect to any Person, any Restricted Subsidiary of such Person other than a Foreign Subsidiary and not including Cott Investment LLC.

“*DTC*” means The Depository Trust Company or any successor securities clearing agency.

“*Eligible Equipment*” means any equipment owned by the Company or any of its Restricted Subsidiaries for which the full purchase price for such equipment has been paid.

“*Eligible Inventory*” means, with respect to any Person, inventory (net of reserves for slow moving inventory) consisting of finished goods held for sale in the ordinary course of such Person’s business, that are located at such Person’s premises and replacement parts and accessories inventory located at such Person’s premises. Eligible Inventory shall not include obsolete items, work-in-process, spare parts, supplies used or consumed in such Person’s business, bill and hold goods, defective goods, if non-salable, “seconds,” and inventory acquired on consignment.

“*Eligible Real Property*” means real property in each case that is owned directly, indirectly or beneficially by the Company or any of its Restricted Subsidiaries other than held by an Unrestricted Subsidiary.

“*Equity Offering*” means a sale of Capital Stock (other than Disqualified Stock) of the Company other than offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions.

“*Exchange Act*” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

“*Excluded Contribution*” means Net Cash Proceeds or property or assets received by the Company as capital contributions to the equity (other than through the issuance of Disqualified Stock) of the Company after the Issue Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock) of the Company, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer’s Certificate of the Company.

“*fair market value*” may be conclusively established by means of an Officer’s Certificate or resolutions of the Board of Directors of the Company setting out such fair market value as determined by such Officer or such Board of Directors in good faith.

“*Fitch*” means Fitch Ratings or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

“*Fixed Charge Coverage Ratio*” means, with respect to any Person on any determination date, the ratio of Consolidated EBITDA of such Person for the most recent four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements are available to the Fixed Charges of such Person for four consecutive fiscal quarters. In the event that the Company or any Restricted

Subsidiary Incurs, assumes, Guarantees, redeems, defeases, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “*Fixed Charge Coverage Ratio Calculation Date*”), then the Fixed Charge Coverage Ratio (solely for purposes of Incurring Indebtedness) shall be calculated giving *pro forma* effect to such Incurrence, assumption, Guarantee, redemption, defeasance, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period; *provided, however*, that the *pro forma* calculation shall not give effect to any Indebtedness Incurred on such determination date pursuant to the provisions described in the second paragraph under “—Certain Covenants—Limitation on Indebtedness” excluding Indebtedness Incurred under clauses (4) and (5) thereof.

For purposes of making the computation referred to above, any Investments, acquisitions, dispositions, mergers, consolidations and disposed operations that have been made by the Company or any of its Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and disposed or discontinued operations (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or disposed or discontinued operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or disposed operation had occurred at the beginning of the applicable four- quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or chief accounting officer of the Company (including cost savings; *provided* that (x) such cost savings are reasonably identifiable, reasonably attributable to the action specified and reasonably anticipated to result from such actions and (y) such actions have been taken or initiated and the benefits resulting therefrom are anticipated by the Company to be realized within twelve (12) months). If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed with a *pro forma* basis shall be computed based on the Fixed Charge Coverage Ratio Calculation Date except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Company may designate.

“*Fixed Charges*” means, with respect to any Person for any period, the sum of:

- (1) Consolidated Interest Expense of such Person for such Period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock of any Subsidiary of such Person during such period;

- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during this period; and
- (4) 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.

“*Foreign Subsidiary*” means, with respect to any Person, any Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof or the District of Columbia, and any Subsidiary of such Subsidiary.

“*GAAP*” means generally accepted accounting principles in the United States of America as in effect on the Issue Date. Except as otherwise set forth in the Indenture, all ratios and calculations based on GAAP contained in the Indenture shall be computed in accordance with GAAP. At any time after the Issue Date, the Company may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in the Indenture), including as to the ability of the Company to make an election pursuant to the previous sentence; *provided* that any such election, once made, shall be irrevocable; *provided, further*, that any calculation or determination in the Indenture that require the application of GAAP for periods that include fiscal quarters ended prior to the Company’s election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP; *provided, further again*, that the Company may only make such election if it also elects to report any subsequent financial reports required to be made by the Company, including pursuant to Section 13 or Section 15(d) of the Exchange Act and the covenants set forth under “Reports,” in IFRS. The Company shall give notice of any such election made in accordance with this definition to the Trustee and the Holders.

“*Governmental Authority*” means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory, self-regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

“*Guarantee*” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or
- (2) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

*provided, however*, that the term “Guarantee” will not include (x) endorsements for collection or deposit in the ordinary course of business or consistent with past practice and (y) standard contractual indemnities or product warranties provided in the ordinary course of business, and provided further that the amount of any Guarantee shall be deemed to be the lower of (i) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (ii) the maximum amount for which such guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee or, if such Guarantee is not an unconditional guarantee of the entire amount of the primary obligation and such maximum amount is not stated or determinable, the amount of such guaranteeing Person’s maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

“*Guarantor*” means the Company and any Restricted Subsidiary that Guarantees the Notes, until such Note Guarantee is released pursuant to the Indenture.

“*Hedging Obligations*” means, with respect to any person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contracts, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

“*Holder*” means each Person in whose name the Notes are registered on the registrar’s books, which shall initially be the respective nominee of DTC.

“*IFRS*” means International Financial Reporting Standards as issued by the International Accounting Standards Board.

“*Immaterial Subsidiary*” means, at any date of determination, each Restricted Subsidiary of the Company that (i) has not guaranteed any other Indebtedness of the Company, the Issuer or another Guarantor, (ii) has Total Assets together with all other Immaterial Subsidiaries as of the last day of the then most recent fiscal year of the Company for which financial statements have been delivered, of less than 5% of the Total Assets of the Company and the Restricted Subsidiaries at such date, determined on a pro forma basis giving effect to any acquisitions or dispositions of companies, divisions or lines of business since the start of such four quarter period and on or prior to the date of determination and (iii) has consolidated revenues (other than revenues generated from the sale or license of property between any of the Issuer and its Restricted Subsidiaries), together with all other Immaterial Subsidiaries for the then most recent fiscal year of the Company for which financial statements have been delivered, of less than 5% of the consolidated revenues (other than revenues generated from the sale or license of property between any of the Company and its Restricted Subsidiaries) of the Company and the Restricted Subsidiaries for such period, determined on a pro forma basis giving effect to any acquisitions or dispositions of companies, divisions or lines of business since the start of such four quarter period and on or prior to the date of determination).

“*Incur*” means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and the terms “Incurred” and “Incurrence” have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only be “Incurred” at the time any funds are borrowed thereunder.

“*Indebtedness*” means, with respect to any Person on any date of determination (without duplication):

- (1) the principal of indebtedness of such Person for borrowed money;
- (2) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all reimbursement obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of Incurrence);

- (4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), which purchase price is due more than one year after the date of placing such property in service or taking final delivery and title thereto;
- (5) Capitalized Lease Obligations of such Person;
- (6) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Company) and (b) the amount of such Indebtedness of such other Persons;
- (8) Guarantees by such Person of the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and
- (9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the net payments under such agreement or arrangement giving rise to such obligation that would be payable by such Person at the termination of such agreement or arrangement),

if and to the extent that any of the foregoing Indebtedness (other than clause (3), (7), (8) or (9)) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP.

The term “Indebtedness” shall not include any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP as in effect on the Issue Date, any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practices, or obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the Issue Date or in the ordinary course of business or consistent with past practices.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amount of funds borrowed and then outstanding. The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (b) the principal amount of Indebtedness, or liquidation preference thereof, in the case of any other Indebtedness.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

- (i) Contingent Obligations Incurred in the ordinary course of business or consistent with past practices;
- (ii) Cash Management Services;
- (iii) in connection with the purchase by the Company or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the

performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;

- (iv) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes; or
- (v) Capital Stock (other than Disqualified Stock and Preferred Stock of Restricted Subsidiaries).

*"Independent Financial Advisor"* means an investment banking or accounting firm of international standing or any third party appraiser of international standing; *provided, however*, that such firm or appraiser is not an Affiliate of the Company.

*"Initial Purchasers"* means Merrill Lynch, Pierce, Fenner & Smith Incorporated, Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., J.P. Morgan Securities LLC and Wells Fargo Securities, LLC.

*"Investment"* means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any Person in the ordinary course of business or consistent with past practices, and excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the Incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared on the basis of GAAP; *provided, however*, that endorsements of negotiable instruments and documents in the ordinary course of business or consistent with past practices will not be deemed to be an Investment. If the Company or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Company or any Restricted Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time.

For purposes of *"—Certain Covenants—Limitation on Restricted Payments"* and *"—Designation of Restricted and Unrestricted Subsidiaries"*:

- (1) *"Investment"* will include the portion (proportionate to the Company's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary of the Company at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent *"Investment"* in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Company's *"Investment"* in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the Board of Directors of the Company in good faith) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary; and
- (2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company.



*“Investment Grade Status”* shall occur when the Notes receive each of the following:

- (1) a rating of “BBB-” or higher from S&P; and
- (2) a rating of “Baa3” or higher from Moody’s;

or the equivalent of such rating by either such rating organization or, if no rating of Moody’s or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization.

*“Issue Date”* means the date on which Notes are first issued.

*“Lien”* means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

*“Management Advances”* means loans or advances made in the ordinary course of business or consistent with past practices to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants of the Company or any Restricted Subsidiary:

- (1) (a) in respect of travel, entertainment or moving related expenses Incurred in the ordinary course of business or consistent with past practices or (b) for purposes of funding any such person’s purchase of Capital Stock (or similar obligations) of the Company or its Subsidiaries with (in the case of this sub-clause (b)) the approval of the Board of Directors; and
- (2) in respect of moving related expenses Incurred in connection with any closing or consolidation of any facility or office.

*“Moody’s”* means Moody’s Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

*“Nationally Recognized Statistical Rating Organization”* means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Exchange Act.

*“Net Available Cash”* from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

- (1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Taxes paid or reasonably estimated to be required to be paid or accrued as a liability under GAAP (including, for the avoidance of doubt, any income, withholding and other Taxes payable as a result of the distribution of such proceeds to the Company and after taking into account any otherwise available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition;
- (2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which by applicable law be repaid out of the proceeds from such Asset Disposition;



- (3) all distributions and other payments required to be made to minority interest holders (other than the Company or any of its respective Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Disposition;
- (4) the deduction of appropriate amounts required to be provided by the seller as a reserve, on the basis of GAAP, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Company or any Restricted Subsidiary after such Asset Disposition; and
- (5) any funded escrow established pursuant to the documents evidencing such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition.

“*Net Cash Proceeds*,” with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of Taxes paid or reasonably estimated to be actually payable as a result of such issuance or sale (including, for the avoidance of doubt, any income, withholding and other Taxes payable as a result of the distribution of such proceeds to the Company and after taking into account any available tax credit or deductions and any tax sharing agreements).

“*Non-Guarantor*” means any Restricted Subsidiary that is not the Issuer or a Guarantor.

“*Note Documents*” means the Notes (including Additional Notes), the Guarantees and the Indenture.

“*Obligations*” means any principal, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuer or any Guarantor whether or not a claim for Post-Petition Interest is allowed in such proceedings), penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“*Offering*” means the offering of the Notes and the application of the proceeds thereof.

“*Officer*” means, with respect to any Person, (1) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Managing Director, or the Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an “Officer” for the purposes of the Indenture by the Board of Directors of such Person.

“*Officer’s Certificate*” means, with respect to any Person, a certificate signed by one Officer of such Person.

“*Opinion of Counsel*” means a written opinion from legal counsel reasonably satisfactory to the Trustee. The counsel may be an employee of or counsel to the Company or its Subsidiaries.

“*Pari Passu Indebtedness*” means Indebtedness of the Issuer which ranks equally in right of payment to the Notes or any Guarantor if such Guarantee ranks equally in right of payment to the Guarantees of the Notes.

“*Permitted Asset Swap*” means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash, Cash Equivalents between the Company or any of its Restricted Subsidiaries and another Person; *provided* that any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with the covenant described under “—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock.”

“*Permitted Investment*” means (in each case, by the Company or any of its Restricted Subsidiaries):

- (1) Investments in (a) a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Company or (b) a Person (including the Capital Stock of any such Person) that will, upon the making of such Investment, become a Restricted Subsidiary;
- (2) Investments in another Person if such Person is engaged in any Similar Business and as a result of such Investment such other Person is merged, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary;
- (3) Investments in cash or Cash Equivalents;
- (4) Investments in receivables owing to the Company or any Restricted Subsidiary created or acquired in the ordinary course of business or consistent with past practices;
- (5) Investments in payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business or consistent with past practices;
- (6) Management Advances not to exceed \$5 million in amount outstanding at any time;
- (7) Investments received in settlement of debts created in the ordinary course of business or consistent with past practices and owing to the Company or any Restricted Subsidiary or in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement including upon the bankruptcy or insolvency of a debtor or otherwise with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (8) Investments made as a result of the receipt of non-cash consideration from a sale or other disposition of property or assets, including an Asset Disposition;
- (9) Investments existing or pursuant to agreements or arrangements in effect on the Issue Date and any modification, replacement, renewal or extension thereof; *provided* that the amount of any such Investment may not be increased except (a) as required by the terms of such Investment as in existence on the Issue Date or (b) as otherwise permitted under the Indenture;
- (10) Hedging Obligations, which transactions or obligations are Incurred in compliance with “—Certain Covenants—Limitation on Indebtedness”;
- (11) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or consistent with past practices or Liens otherwise described in the definition of “Permitted Liens” or made in connection with Liens permitted under the covenant described under “—Certain Covenants—Limitation on Liens”;
- (12) any Investment to the extent made using Capital Stock of the Company (other than Disqualified Stock) as consideration;
- (13) any transaction to the extent constituting an Investment that is permitted and made in accordance with the provisions of the second paragraph of the covenant described under “—Certain Covenants—Limitation on Affiliate Transactions” (except those described in clauses (1), (3), (6), (7), (8) and (10) of that paragraph);

- (14) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or licenses or leases of intellectual property, in any case, in the ordinary course of business or consistent with past practices and in accordance with the Indenture;
- (15) (i) Guarantees not prohibited by the covenant described under “—Certain Covenants— Limitation on Indebtedness” and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business or consistent with past practices, and  
(ii) performance guarantees with respect to obligations incurred by the Company or any of its Restricted Subsidiaries that are permitted by the Indenture;
- (16) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by the Indenture;
- (17) Investments of a Restricted Subsidiary acquired after the Issue Date or of an entity merged into the Company or merged into or consolidated with a Restricted Subsidiary after the Issue Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;
- (18) Investments consisting of licensing of intellectual property pursuant to joint marketing arrangements with other Persons;
- (19) contributions to a “rabbi” trust for the benefit of employees or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Company;
- (20) Investments in joint ventures and Unrestricted Subsidiaries having an aggregate fair market value, when taken together with all other Investments made pursuant to this clause that are at the time outstanding, not to exceed \$50.0 million (in each case, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);
- (21) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (21) that are at that time outstanding, not to exceed the greater of (a) \$100.0 million and (b) 6.75% of the Total Assets of the Company (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value) plus the amount of any distributions, dividends, payments or other returns in respect of such Investments (without duplication for purposes of the covenant described in the section entitled “—Certain Covenants—Limitation on Restricted Payments” of any amounts applied pursuant to clause (c) of the first paragraph of such covenant); *provided* that if such Investment is in Capital Stock of a Person that subsequently becomes a Restricted Subsidiary, such Investment shall thereafter be deemed permitted under clause (1) or (2) above and shall not be included as having been made pursuant to this clause (21);
- (22) loans, advances and guarantees to or in favor of co-packers and other suppliers to assist them, by making plant improvements or purchasing materials or equipment or otherwise, in meeting production requirements of the Company or any of its Subsidiaries in an amount not to exceed \$25.0 million outstanding at any one time; and
- (23) Investments made pursuant to obligations entered into when the investment would have been permitted hereunder so long as such Investment when made reduces the amount available under the clause under which the Investment would have been permitted.

“*Permitted Liens*” means, with respect to any Person:

- (1) Liens on assets of the Company or any of its Restricted Subsidiaries securing Indebtedness and other obligations under the Credit Facilities that were permitted by the terms of the Indenture to be incurred pursuant to clause (1) of the second paragraph of the covenant described above under the caption “—Certain Covenants Limitation on Indebtedness” and/or securing Hedging Obligations related thereto;
- (2) pledges, deposits or Liens under workmen’s compensation laws, unemployment insurance laws, social security laws or similar legislation, or insurance related obligations (including pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements), or in connection with bids, tenders, completion guarantees, contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure surety, indemnity, judgment, appeal or performance bonds, guarantees of government contracts (or other similar bonds, instruments or obligations), or as security for the payment of rent, or other obligations of like nature, in each case Incurred in the ordinary course of business or consistent with past practices;
- (3) Liens imposed by law, including carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s and repairmen’s or other like Liens;
- (4) Liens for taxes, assessments or other governmental charges not yet delinquent or which are being contested in good faith by appropriate proceedings; provided that appropriate reserves required pursuant to GAAP have been made in respect thereof;
- (5) encumbrances, ground leases, easements (including reciprocal easement agreements), survey exceptions, or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Company and its Restricted Subsidiaries or to the ownership of their properties which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Company and its Restricted Subsidiaries;
- (6) Liens (a) on assets or property of the Company or any Restricted Subsidiary securing Hedging Obligations or Cash Management Services permitted under the Indenture; (b) that are contractual rights of set-off or, in the case of clause (i) or (ii) below, other bankers’ Liens (i) relating to treasury, depository and Cash Management Services or any automated clearing house transfers of funds in the ordinary course of business or consistent with past practices and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with past practices of the Company or any Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any Restricted Subsidiary in the ordinary course of business or consistent with past practices; (c) on cash accounts securing Indebtedness incurred under clause (8)(c) of the second paragraph of the covenant described under “—Certain Covenants—Limitation on Indebtedness” with financial institutions; (d) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practices and not for speculative purposes; and/or (e) (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) arising in the ordinary course of business or consistent with

past practices in connection with the maintenance of such accounts and (iii) arising under customary general terms of the account bank in relation to any bank account maintained with such bank and attaching only to such account and the products and proceeds thereof, which Liens, in any event, do not to secure any Indebtedness;

- (7) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights), in each case entered into in the ordinary course of business or consistent with past practices;
- (8) Liens arising out of judgments, decrees, orders or awards not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (9) Liens arising from Uniform Commercial Code financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business or consistent with past practices;
- (10) Liens existing on the Issue Date, excluding Liens securing the Credit Agreement;
- (11) Liens on property, other assets or shares of stock of a Person at the time such Person becomes a Restricted Subsidiary (or at the time the Company or a Restricted Subsidiary acquires such property, other assets or shares of stock, including any acquisition by means of a merger, consolidation or other business combination transaction with or into the Company or any Restricted Subsidiary); *provided, however*, that such Liens are not created, Incurred or assumed in anticipation of or in connection with such other Person becoming a Restricted Subsidiary (or such acquisition of such property, other assets or stock); *provided, further*, that such Liens are limited to all or part of the same property, other assets or stock (plus improvements, accession, proceeds or dividends or distributions in connection with the original property, other assets or stock) that secured (or, under the written arrangements under which such Liens arose, could secure) the obligations to which such Liens relate;
- (12) Liens on assets or property of the Company or any Restricted Subsidiary securing Indebtedness or other obligations of the Company or such Restricted Subsidiary owing to the Company or another Restricted Subsidiary, or Liens in favor of the Company or any Restricted Subsidiary;
- (13) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under the Indenture (other than any Liens securing the Credit Facility Incurred pursuant to clause (1) of the second paragraph under “—Certain Covenants—Limitation on Indebtedness”); provided that any such Lien is limited to all or part of the same property or assets (any improvements, replacements of such property or assets and additions and accessions thereto, after-acquired property subjected to a Lien securing Indebtedness and other obligations Incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, and the proceeds and the products thereof and customary security deposits in respect thereof and in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced;
- (14) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Company or any Restricted Subsidiary of the

Company has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

- (15) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;
- (16) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;
- (17) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business or consistent with past practices;
- (18) [reserved];
- (19) Liens Incurred to secure Obligations in respect of any Indebtedness permitted by clause (7) of the second paragraph of the covenant described under “—Certain Covenants—Limitation on Indebtedness”; *provided* that such Liens shall in no event extend to or cover any assets other than such assets acquired or constructed with the proceeds of such Capital Lease Obligations or Purchase Money Obligations (plus improvements, accession, proceeds or dividends to or distributions in connection with the original assets);
- (20) Liens on Capital Stock or other securities or assets of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;
- (21) any security granted over the marketable securities portfolio described in clause (9) of the definition of “Cash Equivalents” in connection with the disposal thereof to a third party;
- (22) Liens securing Indebtedness of Restricted Subsidiaries that are not Guarantors;
- (23) Liens on specific items of inventory of other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (24) Liens on equipment of the Company or any Restricted Subsidiary and located on the premises of any client or supplier in the ordinary course of business or consistent with past practices;
- (25) Liens on assets or securities deemed to arise in connection with and solely as a result of the execution, delivery or performance of contracts to sell such assets or securities if such sale is otherwise permitted by the Indenture;
- (26) Liens arising by operation of law or contract on insurance policies and the proceeds thereof to secure premiums thereunder, and Liens, pledges and deposits in the ordinary course of business or consistent with past practices securing liability for premiums or reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefits of) insurance carriers;
- (27) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted hereunder;



- (28) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Permitted Investments to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to sell any property in an asset sale permitted under the covenant described under “—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock,” in each case, solely to the extent such Investment or asset sale, as the case may be, would have been permitted on the date of the creation of such Lien;
- (29) Liens securing Indebtedness and other obligations (including Refinancing Indebtedness incurred in respect of Liens Incurred under this clause (29) in an aggregate principal amount not to exceed \$100.0 million;
- (30) Liens securing industrial revenue bonds, pollution control bonds or similar types of tax-exempt bonds;
- (31) Liens Incurred to secure Obligations in respect of any Indebtedness permitted to be Incurred pursuant to the covenant described under “—Certain Covenants—Limitation on Indebtedness”; provided that, with respect to liens securing Obligations permitted under this clause, at the time of Incurrence and after giving pro forma effect thereto, the Consolidated Total Secured Leverage Ratio would be no greater than 2.25 to 1.00; and
- (32) Liens securing Obligations under the Notes and Guarantees.

For purposes of this definition, the term Indebtedness shall be deemed to include interest on such Indebtedness including interest which increases the principal amount of such Indebtedness.

In the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens (at the time of Incurrence or at a later date), the Company in its sole discretion may divide, classify or from time to time reclassify all or any portion of such Permitted Lien in any manner that complies with this covenant and such Permitted Lien shall be treated as having been made pursuant only to the clause or clauses of the definition of Permitted Lien to which such Permitted Lien has been classified or reclassified.

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

“*Post-Petition Interest*” means any interest or entitlement to fees or expenses or other charges that accrue after the commencement of any bankruptcy or insolvency proceeding, whether or not allowed or allowable as a claim in any such bankruptcy or insolvency proceeding.

“*Preferred Stock*,” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“*Purchase Money Obligations*” means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

“*Rating Agency*” means (1) each of Moody’s, Fitch and S&P and (2) if Moody’s, Fitch or S&P ceases to rate the Notes for reasons outside of the Company’s control, a Nationally Recognized Statistical Rating Organization selected by the Company as a replacement agency for Moody’s, Fitch or S&P, as the case may be.

“*Refinance*” means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms “*refinances*,” “*refinanced*” and “*refinancing*” as used for any purpose in the Indenture shall have a correlative meaning.

“*Refinancing Indebtedness*” means Indebtedness that is Incurred Refinance (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the Issue Date or Incurred in compliance with the Indenture (including Indebtedness of the Company that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of the Company or another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; *provided, however*, that:

- (1) (a) such Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being Refinanced; and (b) to the extent such Refinancing Indebtedness refinances Subordinated Indebtedness, such Refinancing Indebtedness is Subordinated Indebtedness;
- (2) Refinancing Indebtedness shall not include:
  - (i) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Guarantor; or
  - (ii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary; and
- (3) such Refinancing Indebtedness has an aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding (plus fees and expenses, including any premium and defeasance costs) under the Indebtedness being Refinanced.

Refinancing Indebtedness in respect of any Credit Facility or any other Indebtedness may be Incurred from time to time after the termination, discharge or repayment of all or any part of any such Credit Facility or other Indebtedness.

“*Registration Rights Agreement*” means the Registration Rights Agreement dated the Issue Date, among the Issuer, the Guarantor and the Initial Purchasers.

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

“*Restricted Subsidiary*” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“*S&P*” means Standard & Poor’s Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

“*Sale and Leaseback Transaction*” means any arrangement providing for the leasing by the Company or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a third Person in contemplation of such leasing.

“SEC” means the U.S. Securities and Exchange Commission or any successor thereto.

“Secured Indebtedness” means any Indebtedness secured by a Lien other than Indebtedness with respect to Cash Management Services.

“Securities Act” means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

“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 Issue Date.

“Similar Business” means (a) any businesses, services or activities engaged in by the Company or any of its Subsidiaries or any Associates on the Issue Date and (b) any businesses, services and activities engaged in by the Company or any of its Subsidiaries or any Associates that are related, complementary, incidental, ancillary or similar to any of the foregoing, which shall include, but not be limited to, businesses, services or activities related to beverages, food, packing, co-packing and shipping thereof or are extensions or developments of any thereof.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Subordinated Indebtedness” means, with respect to any person, any Indebtedness (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinated in right of payment to the Notes pursuant to a written agreement.

“Subsidiary” means, with respect to any Person:

- (1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar 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 of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; or
- (2) any partnership, joint venture, limited liability company or similar entity of which:
  - (a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership interests or otherwise; and
  - (b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“Taxes” means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

“*Total Assets*” mean, as of any date, the total consolidated assets of the Company and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent consolidated balance sheet of the Company and its Restricted Subsidiaries, determined on a *pro forma* basis in a manner consistent with the *pro forma* basis contained in the definition of Fixed Charge Coverage Ratio.

“*Treasury Rate*” means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days (but not more than five Business Days) prior to the redemption date (or, if such statistical release is not so published or available, any publicly available source of similar market data selected by the Company in good faith)) most nearly equal to the period from the redemption date to , 2017; *provided, however*, that if the period from the redemption date to , 2017 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to such applicable date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

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

“*Unrestricted Subsidiary*” means:

- (1) any Subsidiary of the Company that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Company in the manner provided below);
- (2) Northeast Finco Inc., Northeast Retailer Brands, L.L.C., Cott IP Holdings Corp. and Cott NE Holdings Inc.; and
- (2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary of the Company, respectively, (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein) to be an Unrestricted Subsidiary only if:

- (1) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of, or own or hold any Lien on any property of, the Company or any other Subsidiary of the Company which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary; and
- (2) such designation and the Investment of the Company in such Subsidiary complies with “—Certain Covenants—Limitation on Restricted Payments.”

“*U.S. Government Obligations*” means securities that are (1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally Guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from

the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

“*Voting Stock*” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

“*Weighted Average Life to Maturity*” means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

- (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by
- (2) the sum of all such payments.

“*Wholly Owned Domestic Subsidiary*” means a Domestic Subsidiary of the Company, all of the Capital Stock of which (other than directors’ qualifying shares or shares required by any applicable law or regulation to be held by a Person other than the Company or another Domestic Subsidiary) is owned by the Company or another Domestic Subsidiary.

## EXCHANGE OFFER; REGISTRATION RIGHTS

We and the guarantors will enter into a registration rights agreement with the initial purchasers on or before the closing of this offering, pursuant to which the Issuer will agree, for the benefit of the holders of the notes, that the Issuer will, at its own expense, use its reasonable best efforts to file a registration statement (an “exchange offer registration statement”) with respect to a registered exchange offer (an “exchange offer”) to exchange the notes for new notes with terms substantially identical in all material respects with the notes, to cause the exchange offer registration statement to be declared effective by the SEC under the Securities Act and to consummate the exchange offer on or before the 365th day after the date of the initial issuance of the notes. Once the exchange offer registration statement has been declared effective, the Issuer will offer the exchange notes in exchange for surrender of the notes. The Issuer will keep the exchange offer open for at least 20 business days (or longer if required by applicable law) after the date that notice of the exchange offer is mailed to holders of the notes. For each note surrendered to the Issuer pursuant to the exchange offer, the holder who surrendered such note will receive an exchange note having a principal amount equal to that of the surrendered note. Interest on each exchange note will accrue from the last interest payment date on which interest was paid on the note surrendered in exchange therefor or, if no interest has been paid on such note, from the original issue date of such note.

Under existing interpretations of the Securities Act by the SEC contained in several no action letters to third parties, and subject to the immediately following sentence, we believe that the exchange notes would generally be freely transferable by holders thereof after the exchange offer without further registration under the Securities Act (subject to certain representations required to be made by each holder of notes, as set forth below). However, any purchaser of notes who is an “affiliate” of the Issuer or any guarantor and any purchaser of notes who intends to participate in the exchange offer for the purpose of distributing the exchange notes (1) will not be able to rely on the interpretation of the staff of the SEC, (2) will not be able to tender its notes in the exchange offer and (3) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any sale or transfer of the notes unless such sale or transfer is made pursuant to an exemption from such requirements.

In addition, in connection with any resales of exchange notes, any broker dealer (a “Participating Broker Dealer”), which acquired the notes for its own account as a result of market making or other trading activities must deliver a prospectus meeting the requirements of the Securities Act. The SEC has taken the position that Participating Broker Dealers may fulfill their prospectus delivery requirements with respect to the exchange notes (other than a resale of an unsold allotment from this offering) with the prospectus contained in the exchange offer registration statement. The Issuer will agree to make available for a period of up to 180 days after consummation of the exchange offer a prospectus meeting the requirements of the Securities Act to any Participating Broker Dealer and any other persons with similar prospectus delivery requirements for use in connection with any resale of exchange notes. A Participating Broker Dealer or *any* other person that delivers such a prospectus to purchasers in connection with such resales will be subject to certain of the civil liability provisions under the Securities Act and will be bound by the provisions of the registration rights agreement (including certain indemnification rights and obligations thereunder).

Each holder of the notes (other than certain specified holders) who wishes to exchange notes for exchange notes in the exchange offer will be required to make certain representations, including representations that (1) any exchange notes to be received by it will be acquired in the ordinary course of its business, (2) it has no arrangement or understanding with any person to participate in the distribution (within the meaning of the Securities Act) of the exchange notes, (3) it is not an “affiliate” (as defined in Rule 405 under the Securities Act) of the Issuer or any guarantor, and (4) if such holder is a broker dealer that will receive exchange notes for its own account in exchange for notes that were acquired as a result of market making or other trading activities, then such holder will comply with the prospectus delivery requirements of the Securities Act, to the extent applicable, in connection with any resale of the exchange notes.



In the event that (1) any changes in law or the applicable interpretations of the staff of the SEC do not permit the Issuer to effect the exchange offer, (2) for any other reason the exchange offer is not consummated within the time period required by the first paragraph of this “Exchange Offer; Registration Rights” section, (3) under certain circumstances, the initial purchasers shall so request or (4) any holder of notes (other than the initial purchasers) is not eligible to participate in the exchange offer, the Issuer will, at its expense, (a) as promptly as practicable, file with the SEC a shelf registration statement covering resales of the notes and use its reasonable best efforts to cause the shelf registration statement to be declared effective and (b) use its reasonable best efforts to keep the shelf registration statement effective until the earlier of (1) two years after the issue date of the notes and (2) the date all notes covered by the shelf registration statement have been sold as contemplated in the shelf registration statement. The Issuer will, in the event of the filing of the shelf registration statement, provide to each holder of the notes copies of the prospectus which is a part of the shelf registration statement, notify each such holder when the shelf registration statement has become effective and take certain other actions as are required to permit unrestricted resales of the notes. A holder of notes that sells its notes pursuant to the shelf registration statement generally (1) will be required to be named as a selling security holder in the related prospectus and to deliver a prospectus to purchasers, (2) will be subject to certain of the civil liability provisions under the Securities Act in connection with such sales and (3) will be bound by the provisions of the registration rights agreement that are applicable to such a holder (including certain indemnification rights and obligations thereunder). In addition, each holder of the notes will be required to deliver information to be used in connection with the shelf registration statement and to provide comments on the shelf registration statement within the time periods set forth in the registration rights agreement to have their notes included in the shelf registration statement and to benefit from the provisions regarding liquidated damages described in the following paragraph.

If the Issuer has not exchanged the exchange notes for all notes validly tendered in accordance with the terms of an exchange offer on or before the 365th day after the original issue date of the notes or, if applicable, a shelf registration statement covering resales of the notes has not been declared effective 120 days after any obligation to file a shelf registration statement arises or such shelf registration statement ceases to be effective at any time during the shelf registration period (subject to certain exceptions), then additional interest shall accrue as liquidated damages on the principal amount of the notes at a rate of 0.25% per annum for the first 90-day period immediately following such date and by an additional 0.25% per annum with respect to each subsequent 90-day period, up to a maximum additional rate of 0.50% per annum thereafter, until (i) the exchange offer is completed, (ii) the shelf registration statement is declared effective or, if such shelf registration statement ceased to be effective, again becomes effective, or (iii) the second anniversary of the issue date of the notes; as the case may be, as described in the registration rights agreement. Such liquidated damages shall be the sole remedy of any holder (other than a Participating Broker Dealer) with respect to the exchange offer and other registration rights.

This summary of certain provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the complete provisions of the registration rights agreement, a copy of which we will make available to holders of notes upon request.

## CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain United States federal income tax considerations relating to the purchase, ownership and disposition of the notes, but is not intended to be a complete analysis of all potential tax considerations. This summary deals only with beneficial owners of notes that purchase the notes in this offering at their issue price (generally, the first price at which a substantial amount of the notes is sold for money to the public, not including bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) and that will hold the notes as “capital assets” within the meaning of section 1221 of the United States Internal Revenue Code of 1986, as amended (the “Code”) (generally, property held for investment). This summary does not purport to deal with all aspects of United States federal income taxation that might be relevant to a particular holder in light of its personal investment circumstances or status, nor does it address tax considerations applicable to an investor that may be subject to special tax rules, such as certain financial institutions, individual retirement and other tax-deferred accounts, tax exempt organizations, S corporations, partnerships or other pass through entities for United States federal income tax purposes or investors in such entities, insurance companies, broker dealers, dealers or traders in securities or currencies, certain former citizens or residents of the United States subject to section 877 of the Code and taxpayers subject to the alternative minimum tax. This summary also does not discuss notes held as part of a hedge, straddle, synthetic security or conversion transaction, or situations in which the “functional currency” of a United States Holder (as defined below) is not the United States dollar. This summary also does not address tax considerations relevant to the purchase, ownership or disposition of the notes by a holder of our 2018 Notes that tenders some or all of those notes pursuant to the Tender Offer or by a lender under our ABL Facility whose loans thereunder are repaid in connection with this offering. Moreover, the effect of any applicable United States federal estate or gift, state or local or non-United States tax laws is not discussed.

This summary is based on the provisions of the Code, the Treasury regulations promulgated thereunder (the “Treasury Regulations”), judicial authority, published administrative positions of the United States Internal Revenue Service (the “IRS”) and other applicable authorities, each as in effect on the date of this document. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the United States federal income tax considerations discussed below. We have not sought any ruling from the IRS with respect to the statements made and the conclusions reached herein and there can be no assurance that the IRS will agree with our statements and conclusions or that a court would not sustain any challenge by the IRS in the event of litigation.

The following discussion is for informational purposes only and is not a substitute for careful tax planning and advice. Investors considering the purchase of notes should consult their own tax advisors with respect to the application of the United States federal income tax laws to their particular situations, as well as any tax consequences arising under the federal estate or gift tax laws or the laws of any state, local or non-United States taxing jurisdiction or under any applicable tax treaty.

**IRS CIRCULAR 230 DISCLOSURE: ANY STATEMENT HEREIN REGARDING ANY UNITED STATES FEDERAL TAX IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING ANY PENALTIES THAT MAY BE IMPOSED UNDER THE CODE. THE STATEMENTS CONTAINED HEREIN WERE WRITTEN IN CONNECTION WITH THE MARKETING OR PROMOTION OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN. YOU SHOULD SEEK ADVICE BASED ON THE YOUR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

### **Additional payments**

We may be required to pay amounts in redemption of the notes in addition to the stated principal amount of and interest on the notes in certain circumstances (e.g., in the case of a change in control and, under certain circumstances, if we sell certain assets, as described in “Description of Notes—Change of Control” and

“Description of Notes—Certain Covenants—Limitation on Sales of Assets and Subsidiary Stock”) or to pay additional interest on the notes in the circumstances described under “Exchange Offer; Registration Rights”. Although the issue is not free from doubt, we intend to take the position that the possibility of payment of such additional amounts in redemption of, or such additional interest on, the notes does not result in the notes being treated as contingent payment debt instruments under applicable Treasury regulations. If we become obligated to pay additional amounts in redemption of the notes, then we intend to take the position that such amounts will be treated as additional proceeds and taxed as described below under “—United States Holders—Sale, exchange, redemption, retirement or other taxable disposition of notes” or “—Non-United States Holders—Sale, exchange, redemption, retirement or other taxable disposition of notes.” If we become obligated to pay additional interest on the notes, then we intend to take the position that such amounts will be treated as ordinary interest income and taxed as described below under “—United States Holders—Payment of stated interest” or “—Non-United States Holders—Payment of stated interest.” These positions will be based on our determination that, as of the date of the issuance of the notes, the possibility that additional amounts in redemption of, or additional interest on, the notes will have to be paid is a remote or incidental contingency within the meaning of applicable Treasury regulations.

Our determination that a contingency is remote or incidental is binding on a holder, unless such holder explicitly discloses to the IRS on its tax return for the year during which it acquires the notes that it is taking a different position. However, our position is not binding on the IRS. If the IRS takes a contrary position to that described above, a holder may be required to accrue interest income based upon a “comparable yield,” regardless of the holder’s method of accounting. The “comparable yield” is the yield at which we would issue a fixed rate non-convertible debt instrument with no contingent payments, but with terms and conditions similar to those of the notes. In addition, any gain on the sale, exchange, redemption, retirement or other taxable disposition of a note would be recharacterized as ordinary income. Each Holder should consult its own tax advisor regarding the tax consequences of a note being treated as a contingent payment debt instrument. The remainder of this discussion assumes that the notes will not be treated as contingent payment debt instruments.

### **Exchange of notes in the exchange offer**

The exchange of notes for exchange notes in the contemplated exchange offer will not constitute a taxable event. Consequently, a holder’s basis in an exchange note will be the same as its tax basis immediately before the exchange in the note exchanged therefor, and the holder’s holding period for the exchange note will include the holder’s holding period for the note exchanged therefor.

### **United States Holders**

The following is a summary of certain United States federal income tax considerations if you are a United States Holder. As used herein, the term “United States Holder” means a beneficial owner of a note that is, for United States federal income tax purposes:

- an individual who is a citizen or a resident of the United States;
- a corporation created or organized under the laws of the United States or any state thereof or the District of Columbia;
- an estate, the income of which is subject to United States federal income taxation regardless of its source; or
- a trust, if (i) a court within the United States is able to exercise primary jurisdiction over its administration and one or more United States persons have the authority to control all of its substantial decisions, or (ii) in the case of a trust that was treated as a domestic trust under the law in effect before 1997, a valid election is in place under applicable Treasury regulations to treat such trust as a domestic trust.

In the case of a beneficial owner of notes that is classified as a partnership for United States federal income tax purposes, the United States federal income tax treatment of the notes to a partner of the partnership generally will depend upon the tax status of the partner and the activities of the partnership. A partner of a partnership holding notes should consult its own tax advisor.

#### ***Payment of stated interest***

Stated interest on a note will be included in the gross income of a United States Holder as ordinary income at the time such interest is accrued or received, in accordance with the holder's method of accounting for United States federal income tax purposes.

#### ***Sale, exchange, redemption, retirement or other taxable disposition of notes***

Upon the sale, exchange, redemption, retirement or other taxable disposition of a note, a United States Holder generally will recognize gain or loss equal to the difference between (i) the amount realized upon the disposition and (ii) the holder's adjusted tax basis in the note. The amount realized will be equal to the sum of the amount of cash and the fair market value of any property received in exchange for the note (less any portion allocable to any accrued and unpaid interest, which will be taxed as ordinary interest income to the extent not previously so taxed). A United States Holder's adjusted tax basis in a note generally will equal the cost of the note to such holder. This gain or loss generally will be capital gain or loss, and will be long-term capital gain or loss if the United States Holder has held the note for more than one year. In general, long-term capital gains of a non-corporate United States Holder are taxed at lower rates than those applicable to ordinary income. The deductibility of capital losses is subject to limitations. United States Holders should consult their own tax advisors as to the deductibility of capital losses in their particular circumstances.

#### ***Information reporting and backup withholding***

In general, certain information must be reported to the IRS with respect to payments of interest on a note and payments of the proceeds of the sale or other disposition (including a retirement or redemption) of a note, to certain non-corporate United States Holders. The payor (which may be us or an intermediate payor) may be required to impose backup withholding, currently at a rate of 28 percent, if (i) the payee fails to furnish a taxpayer identification number ("TIN") to the payor or to establish an exemption from backup withholding; (ii) the IRS notifies the payor that the TIN furnished by the payee is incorrect; (iii) there has been a notified payee underreporting described in section 3406(c) of the Code; or (iv) the payee has not certified under penalties of perjury that it has furnished a correct TIN and that the IRS has not notified the payee that it is subject to backup withholding under the Code. Any amounts withheld under the backup withholding rules from a payment to a United States Holder will be allowed as a credit against that holder's United States federal income tax liability and may entitle the holder to a refund, provided that the required information is timely furnished to the IRS.

#### ***Additional tax on net investment income***

Legislation enacted in 2010 imposes a 3.8% tax on the "net investment income" (or undistributed "net investment income," in the case of a trust or estate) of certain United States Holders that are individuals, trusts or estates and that have modified adjusted gross income (or adjusted gross income, in the case of a trust or estate) above a certain threshold (which in the case of an individual is between \$125,000 and \$250,000, depending on the individual's circumstances), for taxable years beginning on or after January 1, 2013. A United States Holder's "net investment income" generally includes, among other things, interest income on and capital gain from the disposition of securities like the notes, subject to certain exceptions. If you are a United States holder that is an individual, estate or trust, you are urged to consult your own tax advisor regarding the applicability of this tax to your investment in the notes.

## **Non-United States Holders**

The following is a summary of certain United States federal income tax considerations if you are a non-United States Holder. For purposes of this discussion, the term “non-United States Holder” means a beneficial owner of a note that is, for United States federal income tax purposes:

- a nonresident alien individual;
- a foreign corporation; or
- a foreign estate or trust.

The following discussion applies only to non-United States Holders, and assumes that no item of income, gain, deduction or loss derived by the non-United States Holder in respect of the notes at any time is effectively connected with the conduct of a United States trade or business. Special rules, not discussed herein, may apply to certain non-United States Holders, such as:

- certain former citizens or residents of the United States;
- controlled foreign corporations;
- passive foreign investment companies;
- corporations that accumulate earnings to avoid United States federal income tax; and
- non-United States Holders that are engaged in the conduct of a United States trade or business.

### ***Payment of stated interest***

Subject to the discussion of backup withholding and the “FATCA” legislation below, interest paid on a note by us or any paying agent to a non-United States Holder will be exempt from United States income and withholding tax under the “portfolio interest exemption,” provided that (i) the non-United States Holder does not, actually or constructively, own 10% or more of the combined voting power of all classes of our stock entitled to vote, (ii) the non-United States Holder is not a controlled foreign corporation related to us, actually or constructively, through stock ownership, (iii) the non-United States Holder is not a bank that acquired the notes in consideration for an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business, and (iv) either (a) the non-United States Holder provides to us or our paying agent an IRS Form W-8BEN or W-8BEN-E (or a suitable substitute form), signed under penalties of perjury, that includes its name and address and that certifies its non-United States status in compliance with applicable law and regulations, or (b) a securities clearing organization, bank or other financial institution that holds customers’ securities in the ordinary course of its trade or business on behalf of the non-United States Holder provides a statement to us or our agent under penalties of perjury in which it certifies that an IRS Form W-8BEN or W-8BEN-E (or a suitable substitute form) has been received by it from the non-United States Holder or qualifying intermediary and furnishes a copy to us or our agent. This certification requirement may be satisfied with other documentary evidence in the case of a note held in an offshore account or through certain foreign intermediaries.

If a non-United States Holder cannot satisfy the requirements of the portfolio interest exemption described above, cash payments of interest made to such holder generally will be subject to United States withholding tax at the rate of 30 percent, unless the holder provides us or our agent with a properly executed IRS Form W-8BEN or W-8BEN-E (or suitable substitute form) establishing an exemption from or reduction in withholding under the benefit of an applicable tax treaty.

### ***Sale, exchange, redemption, retirement or other taxable disposition of notes***

Subject to the discussion of backup withholding and the “FATCA” legislation below, a non-United States Holder generally will not be subject to United States federal income tax or withholding tax on any gain realized on a sale, exchange, redemption, retirement or other disposition of a note (other than any amount representing accrued but unpaid interest on the note, which is subject to the rules discussed above under “Non-United States Holders—Payment of stated interest” above) unless the non-United States Holder is an individual who was present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met. If a non-United States Holder is an individual who is present in the United States for 183 days or more during the taxable year of the sale, exchange, redemption retirement or other disposition of a note, and certain other requirements are met, then such non-United States Holder generally will be subject to United States federal income tax at a 30 percent rate (unless a lower applicable treaty rate applies) on the amount by which such non-United States Holder’s capital gains allocable to United States sources for the taxable year exceeds such non-United States Holder’s capital losses allocable to United States sources for the taxable year.

### ***Information reporting and backup withholding***

The amount of interest paid to a non-United States Holder and the amount of tax, if any, withheld from such payment generally must be reported annually to the non-United States Holder and to the IRS. The IRS may make this information available under the provisions of an applicable income tax treaty to the tax authorities in the country in which the non-United States Holder is resident.

Provided that a non-United States Holder has complied with certain reporting procedures (usually satisfied by providing an IRS Form W-8BEN or W-8BEN-E) or otherwise establishes an exemption, the non-United States Holder generally will not be subject to backup withholding with respect to interest payments on, and the proceeds from the disposition of, a note, unless we or our paying agent know or have reason to know that the holder is a United States person. Additional rules relating to information reporting requirements and backup withholding with respect to the payment of proceeds from the disposition (including a redemption or retirement) of a note are as follows:

- If the proceeds are paid to or through the United States office of a broker, a non-United States Holder generally will be subject to information reporting and backup withholding unless the non-United States Holder certifies under penalties of perjury that it is not a United States person (usually on an IRS Form W-8BEN or W-8BEN-E) or otherwise establishes an exemption.
- If the proceeds are paid to or through a non-United States office of a broker that is not a United States person and does not have certain specified United States connections (a “United States Related Person”), a non-United States Holder will not be subject to information reporting or backup withholding.
- If the proceeds are paid to or through a non-United States office of a broker that is a United States person or a United States Related Person, a non-United States Holder generally will be subject to information reporting (but generally not backup withholding tax) unless the non-United States Holder certifies under penalties of perjury that it is not a United States person (usually on an IRS Form W-8BEN or W-8BEN-E) or otherwise establishes an exemption.

Any amounts withheld under the backup withholding tax rules will be allowed as a refund or a credit against the non-United States Holder’s United States federal income tax liability, provided that the required information is timely furnished to the IRS.

### ***“FATCA” legislation affecting taxation of notes held by or through foreign entities***

Legislation enacted in 2010 generally imposes a withholding tax of 30% on interest income on a debt obligation issued by a United States corporation paid after June 30, 2014 and on the gross proceeds of a



disposition of such a debt obligation paid after December 31, 2016 to (i) a foreign financial institution, unless such institution enters into an agreement with the United States government to collect and provide to the United States tax authorities substantial information regarding United States account holders of such institution (which would include certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with United States owners) or (ii) a foreign entity that is not a financial institution, unless such entity provides the withholding agent with a certification identifying the substantial United States owners of the entity, which generally includes any United States person who directly or indirectly owns more than 10% of the entity.

This new withholding tax generally will not apply to a debt obligation that is outstanding on July 1, 2014, such as the notes, unless such debt obligation undergoes a “significant modification” (within the meaning of Section 1.1001-3 of the Treasury regulations) after such date. Accordingly, withholding under FATCA will not apply to the notes unless the terms of the notes were to be significantly modified (within the meaning of applicable Treasury regulations) on or after July 1, 2014. Investors are encouraged to consult with their own tax advisors regarding the implications of this legislation on their investment in the notes.

## **PLAN OF DISTRIBUTION**

Merrill Lynch, Pierce, Fenner & Smith Incorporated, is acting as the representative (the “Representative”) of the initial purchasers. Subject to the terms and conditions of a purchase agreement dated \_\_\_\_\_, 2014 among us, the guarantors and the initial purchasers, we have agreed to sell to the initial purchasers, and each of the initial purchasers has agreed, severally and not jointly, to purchase from us, all of the notes sold under the purchase agreement if any of these notes are purchased. If an initial purchaser defaults, the purchase agreement provides that the purchase commitments of the nondefaulting initial purchasers may be increased or the purchase agreement may be terminated.

We have agreed to indemnify the initial purchasers against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the initial purchasers may be required to make in respect of those liabilities.

### **Commissions and Discounts**

The Representative has advised us that the initial purchasers propose initially to offer the notes at the offering price set forth on the cover page of this offering memorandum. After the initial offering, the offering price or any other term of the offering may be changed. The initial purchasers may offer and sell notes through certain of their affiliates.

### **Notes Are Not Being Registered**

The notes have not been registered under the Securities Act or any state securities laws. The initial purchasers propose to offer the notes for resale in transactions not requiring registration under the Securities Act or applicable state securities laws, including sales pursuant to Rule 144A and Regulation S. The initial purchasers will not offer or sell the notes except to persons they reasonably believe to be qualified institutional buyers or pursuant to offers and sales to non-U.S. persons that occur outside of the United States within the meaning of Regulation S. In addition, until 40 days following the commencement of this offering, an offer or sale of notes within the United States by a dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act unless the dealer makes the offer or sale in compliance with Rule 144A or another exemption from registration under the Securities Act. Each purchaser of the notes will be deemed to have made acknowledgments, representations and agreements as described under “Transfer Restrictions.”

### **New Issue of Notes**

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any national securities exchange or for inclusion of the notes on any automated dealer quotation system. We have been advised by the initial purchasers that they presently intend to make a market in the notes after completion of the offering. However, they are under no obligation to do so and may discontinue any market-making activities at any time without any notice. We cannot assure the liquidity of the trading market for the notes. If an active trading market for the notes does not develop, the market price and liquidity of the notes may be adversely affected. If the notes are traded, they may trade at a discount from their initial offering price, depending on prevailing interest rates, the market for similar securities, our operating performance and financial condition, general economic conditions and other factors.

### **Settlement**

We expect that delivery of the notes will be made to investors on or about \_\_\_\_\_, 2014, which will be the \_\_\_\_\_ business day following the date of this offering memorandum (such settlement being referred

to as “T+ ”). Under Rule 15c6-1 under the Securities Exchange Act of 1934, trades in the secondary market are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade notes prior to the delivery of the notes hereunder will be required, by virtue of the fact that the notes initially settle in T+ , to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the notes who wish to trade the notes prior to their date of delivery hereunder should consult their advisors.

### **No Sales of Similar Securities**

We have agreed that we will not, for a period of 60 days after the date of this offering memorandum, without first obtaining the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, directly or indirectly, issue, sell, offer to contract or grant any option to sell, pledge, transfer or otherwise dispose of, any debt securities or securities exchangeable for or convertible into debt securities, except for the notes sold to the initial purchasers pursuant to the purchase agreement.

### **Short Positions**

In connection with the offering, the initial purchasers may purchase and sell the notes in the open market. These transactions may include short sales and purchases on the open market to cover positions created by short sales. Short sales involve the sale by the initial purchasers of a greater principal amount of notes than they are required to purchase in the offering. The initial purchasers must close out any short position by purchasing notes in the open market. A short position is more likely to be created if the initial purchasers are concerned that there may be downward pressure on the price of the notes in the open market after pricing that could adversely affect investors who purchase in the offering.

Similar to other purchase transactions, the initial purchasers’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of the notes or preventing or retarding a decline in the market price of the notes. As a result, the price of the notes may be higher than the price that might otherwise exist in the open market.

Neither we nor any of the initial purchasers make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the notes. In addition, neither we nor any of the initial purchasers make any representation that we will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

### **Notice to Prospective Investors in the European Economic Area**

In relation to each Member State of the European Economic Area (each, a “Relevant Member State”), no offer of notes may be made to the public in that Relevant Member State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
  - (b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the Representative; or
  - (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive,
- provided that no such offer of notes shall require the Company or the Representative to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

This offering memorandum has been prepared on the basis that any offer of notes in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of notes. Accordingly any person making or intending to make an offer in that Relevant Member State of notes which are the subject of the offering contemplated in this offering memorandum may only do so in circumstances in which no obligation arises for the Company or any of the initial purchasers to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither the Company nor the initial purchasers have authorized, nor do they authorize, the making of any offer of notes in circumstances in which an obligation arises for the Company or the initial purchasers to publish a prospectus for such offer.

For the purpose of the above provisions, the expression “an offer to the public” in relation to any notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the notes to be offered so as to enable an investor to decide to purchase or subscribe the notes, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in the Relevant Member State and the expression “Prospectus Directive” means Directive 2003/71/EC (including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member States) and includes any relevant implementing measure in the Relevant Member State and the expression “2010 PD Amending Directive” means Directive 2010/73/EU.

#### **Notice to Prospective Investors in the United Kingdom**

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are “qualified investors” (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the “Order”) and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as “relevant persons”). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

#### **Notice to Prospective Investors in Switzerland**

This offering memorandum does not constitute an issue prospectus pursuant to Article 652a or Article 1156 of the Swiss Code of Obligations and the notes will not be listed on the SIX Swiss Exchange. Therefore, this offering memorandum may not comply with the disclosure standards of the listing rules (including any additional listing rules or prospectus schemes) of the SIX Swiss Exchange. Accordingly, the notes may not be offered to the public in or from Switzerland, but only to a selected and limited circle of investors who do not subscribe to the notes with a view to distribution. Any such investors will be individually approached by the initial purchasers from time to time.

#### **Notice to Prospective Investors in the Dubai International Financial Centre**

This offering memorandum relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority (“DFSA”). This offering memorandum is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this offering memorandum nor taken steps to verify the information set forth herein and has no responsibility for the offering memorandum. The notes to which this offering memorandum relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the notes offered should conduct their own due diligence on the notes. If you do not understand the contents of this offering memorandum you should consult an authorized financial advisor.

## **Other Relationships**

Some of the initial purchasers and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions. Each of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., J.P. Morgan Securities LLC and Wells Fargo Securities, LLC, or their respective affiliates, are lenders under our ABL Facility. As a result, affiliates of the initial purchasers may receive a portion of the proceeds of the notes.

Merrill Lynch, Pierce, Fenner & Smith Incorporated is serving as dealer manager and solicitation agent in our Tender Offer and Consent Solicitation relating to the 2018 Notes. Certain of the initial purchasers or affiliates of the initial purchasers may be holders of the 2018 Notes and may participate in the Tender Offer and the Consent Solicitation. As a result, such initial purchasers or affiliates would receive a portion of the proceeds of this offering to the extent such 2018 Notes are purchased by us in the Tender Offer.

The Initial Purchasers and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. In addition, in the ordinary course of their business activities, the initial purchasers and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. If the initial purchasers or their affiliates have a lending relationship with us, certain of these initial purchasers or their affiliates routinely hedge and certain other of those initial purchasers or their affiliates may hedge their credit exposure to us consistent with their customary risk management policies. Typically, such underwriters and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the notes offered hereby. Any such short positions could adversely affect future trading prices of the notes offered hereby. The initial purchasers and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

## TRANSFER RESTRICTIONS

The notes have not been registered under the Securities Act, and may not be offered, sold, pledged or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S under the Securities Act), except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Accordingly, the notes are being offered and issued only (a) in the United States, to “qualified institutional buyers” as defined under Rule 144A under the Securities Act in private sales exempt from the registration requirements of the Securities Act provided by Rule 144A, and (b) outside the United States, to persons other than U.S. persons (“foreign purchasers”) in reliance on Regulation S under the Securities Act.

Each purchaser of notes offered otherwise than in reliance on Regulation S (the “Restricted Notes”) will be deemed to have represented and agreed as follows (terms used in this paragraph that are defined in Rule 144A or Regulation S under the Securities Act are used herein as defined therein):

- The purchaser is not an “affiliate,” as defined in Rule 144 under the Securities Act, of the Company, or acting on behalf of the Company and it is either (A) (i) a qualified institutional buyer, (ii) is aware that the sale of the notes to it is being made in reliance on Rule 144A and (iii) is acquiring such notes for its own account or for the account of a qualified institutional buyer or (B) is not a U.S. person and is acquiring the notes outside the United States pursuant to Regulation S.
- The purchaser understands that the notes are being offered in a transaction not involving any public offering in the United States within the meaning of the Securities Act, that such notes have not been registered under the Securities Act and agrees that (A) if in the future, the purchaser decides to offer, resell, pledge or otherwise transfer any of the notes, such notes may be offered, resold, pledged or otherwise transferred only (i) in the United States to a person whom the seller reasonably believes is a qualified institutional buyer in a transaction meeting the requirements of Rule 144A, (ii) outside the United States in a transaction complying with the provisions of Rule 904 under the Securities Act, (iii) pursuant to an exemption from registration under the Securities Act provided by Rule 144 (if available), (iv) pursuant to an effective registration statement under the Securities Act, (v) to Cott or its subsidiaries or (vi) to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act), or (vii) in accordance with another exemption from the registration requirements of the Securities Act, in each of cases (i) through (vii) in accordance with any applicable securities laws of any State of the United States, and that (B) the purchaser will, and each subsequent holder is required to, notify any subsequent purchaser of the notes from it of the resale restrictions referred to in (A) above.
- The purchaser acknowledges that none of the Company or their affiliates, nor the initial purchasers, nor any persons acting on behalf of any of the foregoing has made any statement, representation or warranty to the purchaser with respect to the Company or the offer or sale of any notes, other than the information included in this offering memorandum (including the information incorporated herein by reference), which offering memorandum has been delivered to it and upon which it is relying in making its investment decision with respect to the notes. The purchaser acknowledges that any information it desires concerning the Company, the notes or any other matter relevant to its decision to acquire the notes (including this offering memorandum) is or has been made available to it.
- The purchaser acknowledges that we, the initial purchasers and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations and agreements. If you are acquiring any notes for the account of one or more qualified institutional buyers, you represent that you have full power to make the foregoing acknowledgements, representations and agreements on behalf of such account.



- The purchaser understands that the notes will bear a legend to the following effect, unless otherwise agreed to by us and the holder thereof:

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”). NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING ITS SECURITY IN AN “OFFSHORE TRANSACTION” PURSUANT TO RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT PRIOR TO (X) THE DATE WHICH IS ONE YEAR (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF (OR OF ANY PREDECESSOR OF THIS SECURITY) OR THE LAST DAY ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE “RESALE RESTRICTION TERMINATION DATE”), OFFER, SELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED THAT THE COMPANY, THE TRUSTEE AND THE REGISTRAR SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION, ALL IN FORM AND SUBSTANCE SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. AS USED HEREIN, THE TERMS “OFFSHORE TRANSACTION,” “UNITED STATES” AND “U.S. PERSON” HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

- The purchaser understands that in addition to the above legend, notes issued pursuant to an offshore transaction complying with Regulation S will bear other legends relating to restriction on transfer specific to it.
- The purchaser agrees that it will give to each person to whom it transfers notes notice of any restrictions on transfer of such security.

- If you are a purchaser in a sale that occurs outside the United States within the meaning of Regulation S under the Securities Act, you acknowledge that until the expiration of the “40-day distribution compliance period” within the meaning of Rule 903 of Regulation S, any offer or sale of the notes shall not be made by you to a U.S. person or for the account or benefit of a U.S. person within the meaning of Rule 902 under the Securities Act.
- By acceptance of a note, the purchaser shall be deemed to have represented and warranted that either (1) no portion of the assets used to acquire the notes constitutes assets of any employee benefit plan subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”), any plan, account or other arrangement subject to Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), or any entity whose underlying assets are considered to include “plan assets” of any such plan, account or arrangement or any other plan subject to provisions under any federal, state, local laws or regulations (including non-U.S.) that are similar to prohibited transaction provisions of ERISA or the Code (“Similar Laws”) or (2) the acquisition and holding of the notes will not constitute a nonexempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a similar violation under any applicable Similar Laws.

## **LEGAL MATTERS**

We have been represented by Kirkland & Ellis LLP, New York, New York, as United States counsel, and Goodmans LLP, as Canadian counsel. The initial purchasers have been represented by Shearman & Sterling LLP, New York, New York with respect to United States legal matters and by Stikeman Elliott LLP with respect to Canadian legal matters.

#### **INDEPENDENT REGISTERED CERTIFIED PUBLIC ACCOUNTING FIRM**

The financial statements incorporated in this Offering Memorandum by reference to the Annual Report on Form 10-K for the year ended December 28, 2013, and the effectiveness of internal control over financial reporting as of December 28, 2013 have been audited by PricewaterhouseCoopers LLP, an independent registered certified public accounting firm, as stated in their report incorporated herein.

## **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements, and other information with the SEC. These reports, proxy statements, and other information can be read and copied at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The SEC maintains a website (<http://www.sec.gov>) that contains reports, proxy and information statements and other information regarding companies that file electronically with the SEC, including us. These reports, proxy statements and other information can also be read at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

---

---

**\$525,000,000**



**Cott Beverages Inc.**

**% Senior Notes due 2022**

---

**OFFERING MEMORANDUM**

---

**BofA Merrill Lynch**  
**Credit Suisse**  
**Deutsche Bank Securities**  
**J.P. Morgan**  
**Wells Fargo Securities**

**, 2014**

---

---